

CITY OF SAN DIEGO

KAYAK CONCESSION AGREEMENT

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and LA JOLLA SEA CAVE KAYAKS, LLC, a California limited liability company ("CONCESSIONAIRE"), to be effective April 1, 2020 following the execution by the City Attorney ("Effective Date"), as follows:

1. **Incorporated Documents.** This Agreement is created pursuant to the City of San Diego REQUEST FOR PROPOSAL ("RFP") for Kayak Concessions issued by the CITY on November 19, 2019, and CONCESSIONAIRE's proposal in response to the RFP, dated January 13, 2020. Attached and incorporated herein are the following documents: **Site Map (Exhibit A); Primary Kayak Tour Schedule (Exhibit B-1); Secondary Kayak Tour Schedule (Exhibit B-2); Kayak Concession Requirements (Exhibit C); and CONCESSIONAIRE'S Operating Plan (Attachment A).** Additional terms and conditions listed in the RFP shall also apply throughout the term of the Agreement.
2. **Right to Enter.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate Kayak Concessions ("Concessions") within the City beach known as La Jolla Shores, in the boat launch zone and on the beach which extends 125 feet north from the southern end of the westerly extension of Avenida De La Playa, as depicted on **Exhibit A, hereinafter referred to as the "Site."**

Concessions at the Site may be terminated or changed for any reason by CITY upon thirty (30) days written notice from CITY to CONCESSIONAIRE. However, the CITY may terminate or change any and all concessions at the Site without any notice to Concessionaire's if such termination or change is in the interest of public safety. If an alternate site is not available, a proportionate amount of the fixed concession Minimum Fee (as specified in Section 10.B.) may be adjusted by CITY for the deleted site.
3. **Allowed Uses.** This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate Kayak Concessions. The term Concessions means an operation involving the conducting of kayak tours and rentals, the sale of souvenir photos and videos of the tours, as well as delivering and removing rental and tour kayaks serving the general public under the terms and conditions of this Agreement. There shall be no commercial use of Laureate or Kellogg Parks by the CONCESSIONAIRE. No solicitation or marketing is permitted on any portion of any City beach. Renting or selling of beach equipment or any other merchandise is not allowed under this Agreement. Any use of the Site other than for Concessions as described herein shall constitute good cause for immediate termination of this Agreement.
4. **Maximum Days and Hours of Operation.** CONCESSIONAIRE shall not conduct any Concession prior to 8 a.m. daily throughout each Agreement Year (defined in Section 6). All

kayaks must be removed from the designated storage area before dark. All kayak tours are to be completed and out of the water fifteen (15) minutes before sunset daily.

CITY reserves the right to change the days and/or hours of operation at its discretion. All Concession operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4th of July holiday each year.
 - B. Special Events. Unless otherwise authorized by the CITY, CONCESSIONAIRE shall not be allowed to operate Concessions within certain areas of the Site during days in which "Special Events," as defined in San Diego Municipal Code section 22.4003, are scheduled by CITY in this area. CITY shall give CONCESSIONAIRE fourteen (14) days advance written notice of any such "Special Events."
5. Competent Management. Throughout the term of this Agreement, CONCESSIONAIRE shall provide competent management of the Concession and the Site for the permitted uses to the satisfaction of the CITY. CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concession to maximize gross revenue.
 6. Term. The term of this Agreement ("Term") shall be thirty-six (36) months commencing on the Effective Date. Agreement Year ("Agreement Year") as used in this Agreement means any of the three (3) consecutive twelve (12) month periods beginning with the Effective Date. The City may extend this Agreement at the end of the initial 3-year term by up to two (2) additional twelve (12) month periods. This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice to the other party. Any written notice to this effect shall be served in accordance with Section 47 of this Agreement.
 7. Holding Over. Any use of the Concession Site by CONCESSIONAIRE after the expiration of this Agreement is not permitted without the written consent of the CITY. Any such extensions will continue as month-to-month extensions of this Agreement. If CONCESSIONAIRE continues use of the Site after the expiration or earlier termination of this Agreement without obtaining CITY approval, such use shall neither constitute a renewal or extension of this Agreement, nor give CONCESSIONAIRE any rights in or to the Site. Any holdover of the Term of the Agreement beyond sixty (60) months -must be approved by CITY.
 8. Revocable License. This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked, terminated, or suspended by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of the revocation, termination, or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY's revocation, termination, or suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.B that conflict with or prohibit CONCESSIONAIRE's use the Site.

9. Special Provisions

- A. Operating Plan. The Operating Plan for the proposed Agreement Year submitted with the CONCESSIONAIRE's response to the CITY'S RFP, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY's approval, and the final CITY approved Operating Plan shall be incorporated into this Agreement as **Attachment A: Operating Plan**, attached hereto. *Within sixty (60) days prior to the beginning of the second Agreement Year, and for every Agreement Year thereafter, the CONCESSIONAIRE will provide the CITY with an Operating Plan for the coming Agreement Year (twelve (12) calendar months) for the CITY's approval.* These Operating Plans must be submitted by February 1st of each calendar year for the upcoming season under this Agreement. All Operating Plans submitted to the CITY should be consistent with the format and content of the originally approved Operating Plan. CITY will have the right to approve or disapprove the proposed Operating Plan. Once approved, CONCESSIONAIRE will not make any changes to the Operating Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Agreement comply with the Kayak Concession Requirements incorporated herein as **Exhibit C: Kayak Concession Requirements**, attached hereto. Failure to provide an Operating Plan as described in this paragraph will constitute a material breach of this Agreement.

The CITY reserves the right to make changes at any time to the tour schedules and/or the number of individual kayak rentals permitted based on operational and safety considerations. **At all times, the CONCESSIONAIRE shall ensure that all permitted operations comply with the Kayak Concession Requirements incorporated herein as Exhibit C: Kayak Concession Requirements.**

- B. Exclusiveness of Agreement and Unauthorized Vending. In addition to Special Events described in Section 4.B., CITY may, during the term of this Agreement, enter into Agreements with other concessionaires to provide -related Concessions during times not scheduled for operations in the approved Operating Plan at the Site permitted in this Agreement. In addition, should any existing launch times become vacant throughout the term of this Agreement, CITY may distribute these open times among the existing concessionaires at its own discretion. However, CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Site shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Site. CONCESSIONAIRE shall erect no improvements nor place any items on the Site without prior written approval by the CITY. The Site must be maintained to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Site by the CONCESSIONAIRE must be approved in writing by CITY and shall not remain on location after permitted hours of operation, unless prior written approval of CITY is obtained. If in the opinion of CITY, the number of scheduled tours within any Concession covered under this Agreement at any times falls short of or exceeds the number of scheduled tours needed to adequately

serve the public, CONCESSIONAIRE will, upon receipt of notice from CITY, adjust the number of scheduled tours to the number specified by CITY. CITY will not be liable to CONCESSIONAIRE in any way for such adjustments. CONCESSIONAIRE will operate no more and no fewer than the scheduled tours designated in this Agreement unless CITY decides to change the number of scheduled tours.

- D. No Improvements. No improvements, trade fixtures, structures, and installations or additions to the Site are allowed to be installed by CONCESSIONAIRE. All personal property remaining on the Site after expiration or termination of this Agreement will become the property of CITY.
- E. Storefront. CONCESSIONAIRE will maintain a storefront. All business transactions must be conducted within the listed storefront address. Kayak tour participants will meet inside t CONCESSIONAIRE's store and conduct all orientation/training inside of the store or in the training area designated by the CITY. Businesses must have adequate space to accommodate customer volume and kayak inventory.

The CITY reserves the right to perform inspections, reviews, and site visits with or without advance notice. These inspections, reviews, and site visits may be for any or all aspects related to the Agreement, including but not limited to ensuring that CONCESSIONAIRE: (a) obtains and maintains certificates and qualifications of tour guides; (b) adequately addresses all safety concerns; (c) adheres to the Tour Schedules; and (d) properly maintains all required records pertaining to clients. Violation of any aspect of this Agreement may result in suspension or termination of this Agreement. With regard to safety, the CITY or any other officer with authority to enforce local, state or federal law, has the right to immediately terminate any tour or individual kayak rental if there is a violation of safety requirements.

- F. Maintenance of Site. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Site clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said Site to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. The Site must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- G. Standard of Employees. CONCESSIONAIRE and its employees shall, at all times, conduct themselves and the operations of the Concession in a respectable and courteous manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and will regularly monitor its employees to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all the Kayak Concession Requirements (Exhibit C) of this Agreement.

10. Fees.

CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee ("Percentage Fee") or the Minimum Fee ("Minimum Fee"), as described

below. If the combined total amount of fees paid by CONCESSIONAIRE during any Agreement Year equals or exceeds the Annual Minimum Fee for that Agreement Year, then CONCESSIONAIRE shall only pay the Percentage Fee each subsequent month until either a new Agreement Year begins or this Agreement ends. If, in any Agreement Year, Monthly Minimum Fees paid plus Percentage Fees paid exceed the Annual Minimum Fee and also exceed the annual fee which would have been paid if the Percentage Fee had been paid on Gross Revenue, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- A. Percentage Fees. Percentage Fees will consist of twelve percent (12.00%) of the gross revenue resulting from the Kayak Concession operations permitted under this Agreement during each month of an Agreement Year. The CITY, in its sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Allowed Uses, as may be approved in writing by the CITY prior to the commencement of any additional service or operation. However, any activity conducted on the Site without the prior written approval of the CITY will be subject to the requirements of Section 10.F. Unauthorized Use Charge. The City in its sole discretion, reserves the right to increase the Percentage Fee or Minimum Fee at any time during this Agreement by providing a thirty (30) day notice to Concessionaire. A review of the percentage fee will be conducted at the first "Option Date" in Year Four.
- B. Gross income is derived from kayak tour sales, individual kayak rentals, and, souvenir photography and video sales of the tours. Accessories sold in the store/shop will not be included in gross income.
- C. Minimum Fees. The Annual Minimum Fee established for the first Agreement Year following the effective date of this Agreement is four thousand one hundred and twenty-two dollars and thirty-eight cents (\$4,122.38), which is three hundred and forty-three dollars and fifty-three cents (\$343.53) on a monthly installment basis ("Monthly Minimum Fee").

The Monthly Minimum Fee is to be paid in monthly installments on or before the day of the calendar month when the Percentage Fee is due pursuant to Section 10.K. Time and Place of Payment.

- D. Minimum Fee Adjustment. Effective at the beginning of the first day of the third and fifth Agreement Years of this Agreement ("Adjustment Date"), the annual Minimum Fee will be set at eighty percent (80.00%) of the annual average of the Total Fees Paid under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment date. The annual average of the Total Fees Paid will then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments will be calculated by the CITY upon completion of payments due for the

preceding years to determine the amount of the Minimum Fee. Until such calculations are completed, CONCESSIONAIRE will continue paying the monthly Minimum Fee at the current rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate will be paid to the CITY within thirty (30) days following written notice provided pursuant to Section 47 of this Agreement. In no event will the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the Adjustment Date. In the event that the Total Fees Paid prior to the Adjustment Date do not exceed the current annual Minimum Fee, the annual Minimum Fee will be increased to one-hundred five percent (105%) of the annual Minimum Fee most recently in effect.

- E. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any fees when due, CONCESSIONAIRE will pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee shall be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE shall pay in addition to delinquent fee. The parties agree that such late fees are appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- F. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY, as an additional fee, an unauthorized use charge equal to one hundred percent (100%) of the Gross Revenue (as defined in Section 10.G.) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in the Agreement for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, shall constitute an authorization of an unauthorized use, and shall not be waiver of any of the CITY's rights under the Agreement.
- G. Gross Revenue. "Gross Revenue," as used in this Agreement, will include all income resulting from Concession kayak tour sales, individual kayak rentals, and the sale of photography and video sales of the tours, whether received or to become due; provided, however, that Gross Revenue will not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Gross Revenue includes all revenue received by CONCESSIONAIRE from internet sales (for example, if using a website such as Groupon, Gross Revenue would include all payment received by CONCESSIONAIRE from a Groupon sale). Possessory interest taxes or other property taxes will not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross Revenues will not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees,

permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site shall be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.

H. Payment Procedure. CONCESSIONAIRE will provide CITY with a correct income statement for the Site operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Revenue in a form selected by CITY. This income statement shall be due to CITY by the end of the calendar month immediately following the month for which the income statement was generated. The income statement shall be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each income statement shall include:

- i. Total Gross Revenue for the subject month itemized as to business categories for which the separate Percentage Fee is established.
- ii. The amount of the Percentage Fee due to CITY and the manner in which such Percentage Fee was computed and totaled.
- iii. The accumulated total of all fees previously paid to CITY for the current Agreement Year.
- iv. Payments in the greater of the two following amounts: The Monthly Minimum Fee or the total Percentage Fee due CITY computed as described in Section 10.A and 10.C.

I. Inspection of Records.

- i. Records. CONCESSIONAIRE will at all times during the Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records will be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine the Gross Revenue. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered will be read and recorded at the beginning and end of each business day. Regarding admission charges or concession fees, CONCESSIONAIRE will issue serially numbered tickets for such admission or concession fees and will keep an adequate record of such tickets, as well as a record of unissued tickets. All retail

sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. **Financial Statements.** Within sixty (60) days after the end of each Agreement Year, CONCESSIONAIRE shall at its sole cost and expense, submit to CITY a statement in which the total Gross Revenue and the corresponding amounts of Percentage Fees paid CITY for that Agreement Year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement shall be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which will be legally binding upon CONCESSIONAIRE. Failure to provide financial statements as described in this paragraph will constitute a material breach of this Agreement.
- iii. **Right to Inspect.** All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.I.i, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, will have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Agreement. At CITY's request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- iv. **Audit Cost.** The full cost of the CITY's audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):
 - A. The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) during the period of time being audited or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
 - B. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any fee deficiency determined by the audit will be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession

fees under this Agreement Section 10.E. CITY will credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY shall refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- J. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a material breach of this Agreement and good cause for termination.
- K. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- L. Security Deposit. The CONCESSIONAIRE will deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of five thousand dollars (\$5,000.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit will be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the deposit or any remaining balance will be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee. CONCESSIONAIRE shall maintain this security deposit throughout the Term of this Agreement. Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of its property from the Site.

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon ten (10) days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Agreement.
 - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Agreement, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Agreement.
11. CITY's Consent, Discretion. Whenever required under this Agreement, CITY's consent or approval will mean the written consent or approval of the City Manager, or designee, unless otherwise expressly provided. CITY's discretionary acts hereunder will be made in the City Manager's, or designee's, sole and absolute discretion, unless otherwise expressly provided.
12. Acceptance of Site. CONCESSIONAIRE represents and warrants that it has independently inspected the Site and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Site is in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Site and required by this Agreement, and that CONCESSIONAIRE will hold CITY harmless for any defects, whether apparent or latent, in the Site, including without limitation the presence of any hazardous substances.
13. Maintenance of the Site. CONCESSIONAIRE will, at CONCESSIONAIRE's sole cost and expense and to CITY's satisfaction, maintain the Site in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Standard of Conduct. CONCESSIONAIRE and its employees will at all times conduct themselves and the operations on the Site in a respectable and courteous manner.
15. Inspection. CITY may, at all times, enter and inspect the Site and Storefront shop with or without advance notice. These inspections, reviews, and site visits may be for any or all aspects related to the Agreement, including but not limited to ensuring that each CONCESSIONAIRE: (a) obtains and maintains certificates and qualifications of tour guides; (b) adequately addresses all safety concerns; (c) adheres to the Tour Schedules; and (d) properly maintains all required records pertaining to clients. Violation of any aspect of the Agreement may result in suspension or revocation of the Agreement. With regard to safety, the CITY or any other officer with authority to enforce local, state, or federal law, has the right to immediately terminate any tour or individual kayak rental if there is a violation of

safety requirements.

16. **Insurance.** CONCESSIONAIRE will obtain and maintain throughout the Term of this Agreement, at its sole cost and expense, all insurance required by this Agreement. CONCESSIONAIRE's liabilities under this Agreement, including without limitation CONCESSIONAIRE's indemnity obligations, will not be deemed limited in any way to the insurance coverage required herein. CONCESSIONAIRE's maintenance of the required insurance coverage is a material consideration for this Agreement. Notwithstanding any provision of this Agreement to the contrary, if CONCESSIONAIRE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, CONCESSIONAIRE will be in default of this Agreement. CONCESSIONAIRE will not modify any policy or endorsement thereto which increases CITY's exposure to loss. CONCESSIONAIRE will obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which will be subject to CITY's written approval thereof:
- A. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which will cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There will 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 will be outside the limits of the policy.
 - B. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance will cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement.
 - C. Workers' Compensation Insurance, as required by applicable laws, for all of CONCESSIONAIRE's employees who are subject to this Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
 - D. Marine General Liability (MGL) With limits of no less than \$2 million per occurrence and \$4 million aggregate.
 - E. **Causes of Loss-Special Form Property Insurance.** CONCESSIONAIRE shall obtain and maintain, all its own cause and expense, Causes of Loss-Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Site in

an amount to recover one hundred percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.

- F. **Additional Insureds.** To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; (b) CONCESSIONAIRE's products; (c) CONCESSIONAIRE's work, including without limitation CONCESSIONAIRE's completed operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; or (d) the Site.
- G. **Primary & Non-Contributory.** Each policy must be endorsed to provide that the insurance afforded by CONCESSIONAIRE's policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives, and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives, and agents will be in excess of CONCESSIONAIRE's insurance and will not contribute to it.
- H. **Severability of Interest.** Each policy must be endorsed to provide that CONCESSIONAIRE's insurance will 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 will provide cross-liability coverage.
- I. **Qualified Insurer(s).** Except for the State Compensation Insurance Fund, all insurance required by this Agreement will 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 may 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 (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers will be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer will be subject to CITY's approval in each instance.
- J. **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- K. **Continuity of Coverage.** All policies will be in effect on or before the first day of the Term, except "course of construction fire insurance" will be in force on commencement of all authorized construction, and full applicable fire insurance coverage will be effective upon completion of each insurable improvement. The policies will be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of

each insurance policy, CONCESSIONAIRE will furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE will provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, CONCESSIONAIRE will immediately notify CITY and will immediately obtain replacement insurance as soon as possible.

- L. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE will also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
 - M. Accident Reports. CONCESSIONAIRE will immediately report to CITY any accident causing property damage or injury to persons on the Site or otherwise related to the Allowed Uses. Such report will 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, photographs or video, if any, and other pertinent information.
17. Indemnification. CONCESSIONAIRE will defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, maintenance, restoration, or improvement of the Sites, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold CITY harmless will not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE will pay the CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.
18. Nondiscrimination. This Agreement is made and accepted upon and subject to the covenant and condition, which will run with the land, that CONCESSIONAIRE or any person claiming under or through CONCESSIONAIRE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the

possession, use, or occupancy of the Sites or in the selection, location, number, use or occupancy of tenants, subtenants, or vendees in the Sites.

19. **Local Business and Employment.** CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. **Drug-free Workplace.** CONCESSIONAIRE will be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Site and specifying the actions that will be taken against employees for violations of the prohibition; and
 - B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. **Accessibility Compliance.** CONCESSIONAIRE will, as applicable to the Sites and CONCESSIONAIRE's possession, use, and occupancy of the Sites, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (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, CONCESSIONAIRE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). CONCESSIONAIRE's compliance will include without limitation the following:
 - A. CONCESSIONAIRE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline,

layoffs, and termination of employment;

- B. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of CONCESSIONAIRE;
 - C. CONCESSIONAIRE will post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - D. Where required by law, all improvements, fixtures, structures, or installations on the Sites will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Sites which deny access to individuals with disabilities. All improvements and alterations will be at CONCESSIONAIRE's sole expense.
 - E. CONCESSIONAIRE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this Agreement.
22. CONCESSIONAIRE's Risk. CONCESSIONAIRE will bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.
23. Nuisance and Noise Disturbances. CONCESSIONAIRE will not use the Site in any manner which, in CITY's opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
24. No Assignment. CONCESSIONAIRE will not assign any rights granted by this Agreement or any interest herein without CITY's prior written consent. Approval of any such proposed assignment may be withheld in CITY's sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.
25. Signs. CONCESSIONAIRE will display the Concession sign displaying this is a CITY-approved Concession at all times while operating the Concessions. CITY will provide a sign during the first Agreement Year. If such sign is lost or stolen, CONCESSIONAIRE must obtain a duplicate sign and its sole expense. CONCESSIONAIRE will not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices, or advertising without CITY's prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE will remove the item at its expense within 24 hours from receiving notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.

26. Charter Section 225. Pursuant to San Diego City Charter Section 225, CONCESSIONAIRE and assignees will make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. CONCESSIONAIRE's failure to fully disclose all of the information required by Charter Section 225 or CONCESSIONAIRE's failure to require each of its assignees to fully disclose such information will be a default of this Agreement. Pursuant to City Charter Section 225, every person or entity that will have an interest in this Agreement as an assignee must be reviewed and approved by City.
27. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE shall be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
28. Encumbrances. CONCESSIONAIRE will keep the Site free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site. CONCESSIONAIRE will protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Site, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
29. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under subsection B below) which are grounds for immediate termination, in the event that:
- i. CONCESSIONAIRE defaults in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and fails to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE fails to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE voluntarily files or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or

iii. CONCESSIONAIRE makes a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate or suspend this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Site or to possession thereof, and CITY may then enter and take possession of the Site and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (A)(i.) of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY will not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Agreement without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- B. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection A above, in the event CONCESSIONAIRE defaults in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state, or federal law, or any covenants or conditions in CONCESSIONAIRE's Operating Plan or Exhibit C: Kayak Concession Requirements that, in the CITY's sole discretion, relate to public safety ["Safety Violations"], CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, suspend or terminate this Agreement.
- C. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Site, this Agreement will continue in full force and effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. CITY may also redistribute CONCESSIONAIRE's vacant launch times among the remaining concessionaires. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:
- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
 - ii. The appointment of a receiver upon initiative of CITY to protect CITY's interest under this Agreement.

30. **Damages.** CITY, in the event of CONCESSIONAIRE's default under this Agreement, may recover the outstanding annual Minimum Fees due for the remaining term of the Agreement, less any mitigation measures taken by CITY. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
31. **Compliance with Laws.** CONCESSIONAIRE will, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE's occupancy, use, development, and maintenance of the Site.
32. **Taxes.** CONCESSIONAIRE will pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Site, including any licenses or permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE will be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE's payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.
33. **Equal Opportunity.** CONCESSIONAIRE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. CONCESSIONAIRE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. CONCESSIONAIRE will cause the foregoing provisions to be inserted in all of CONCESSIONAIRE's contracts for work related to this Agreement so that such provisions will be binding upon each of CONCESSIONAIRE's contractors. CONCESSIONAIRE will fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request CONCESSIONAIRE will submit a current Workforce Report. CONCESSIONAIRE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.
34. **Equal Benefits.** CONCESSIONAIRE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require concessionaires on CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Agreement, CONCESSIONAIRE certifies that it will maintain such equal benefits throughout the term of this Agreement. CONCESSIONAIRE's failure to maintain equal benefits will be a default

of this Agreement.

35. **Equal Pay Ordinance.** Unless an exception applies, CONCESSIONAIRE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, CONCESSIONAIRE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
 - A. **Notice Requirement.** CONCESSIONAIRE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
36. **CITY Employee Participation Policy.** CITY may unilaterally and immediately terminate this Agreement if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of CONCESSIONAIRE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
37. **Water Quality Assurances.** The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, CONCESSIONAIRE will, at a minimum, implement and comply as applicable with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CONCESSIONAIRE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

38. **Hazardous Substances.** CONCESSIONAIRE will not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors will not install, store, utilize, generate or sell any Hazardous Substance on the Sites without CITY's prior written consent. CONCESSIONAIRE will, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with

tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

- A. Release. A "release" will include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- B. Hazardous Substance. "Hazardous Substance" will mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- C. Remediation. If CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Sites results in a release of a Hazardous Substance, CONCESSIONAIRE will pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Sites, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- D. Removal. If CONCESSIONAIRE or CONCESSIONAIRE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances or hazardous wastes to the Sites, CONCESSIONAIRE and/or CONCESSIONAIRE's contractor or agent will remove all Hazardous Substances and hazardous wastes in any type of container, equipment, or device from the Sites immediately upon or prior to the expiration or earlier termination of this Agreement. Upon CITY's request, CONCESSIONAIRE will deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment, or devices from the Sites. CONCESSIONAIRE will be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- E. Indemnity. CONCESSIONAIRE will protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE's occupancy, use, development, maintenance, or restoration of the Sites, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- F. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Sites, CONCESSIONAIRE will immediately notify CITY and any appropriate regulatory or reporting agency in compliance with

California Code of Regulations Title 19 and all other applicable laws or regulations. CONCESSIONAIRE will deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, CONCESSIONAIRE will take all actions necessary to alleviate the danger. CONCESSIONAIRE will immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Sites.

- G. Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's occupancy, use, development, maintenance, or restoration of the Sites ("CONCESSIONAIRE's Operations"), resulted in any Hazardous Substance being released on, from, or beneath the Sites, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment will be obtained at CONCESSIONAIRE's sole cost and expense, and will establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's Operations on, in, from, or under the Sites, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Sites, then the environmental assessment will include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE will cause, or if CONCESSIONAIRE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Sites and compliance with environmental law and regulations are achieved, and CONCESSIONAIRE will pay all costs and expenses therefor.
39. Storm Water Pollution Prevention Program. CONCESSIONAIRE will comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.
- A. CONCESSIONAIRE will comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council

on July 1, 2015, via Resolution No. 309791, as may be amended.

- B. CONCESSIONAIRE will comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.
40. Waiver. The property constituting the Site is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, in one or more instances, will not be construed as a waiver of any such obligation, and the same will remain in full force and effect. CITY's waiver of a default will not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy will not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default will not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents will not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default will not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
41. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
42. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
43. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
44. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
45. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
46. Entire Agreement. This Agreement, along with all attachments and incorporated documents, constitutes the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them and pertaining to

this Agreement and CONCESSIONAIRE's occupancy, use, development, and maintenance of the Site. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.

47. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

The CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Ste 1700 MS 51A
San Diego, CA 92101

CONCESSIONAIRE:
La Jolla Sea Cave Kayaks, LLC
Attn. Jennifer Kleck
2164 Avenida de La Playa
La Jolla, CA 92037

48. **Governmental Approvals.** By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site.
49. **City's Not-Liability.** CITY will not be liable to CONCESSIONAIRE, its employees, agents, representatives, invitees, or guests for any loss of revenue, business, or otherwise as a result of any weather conditions, beach closures, surf alerts, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, unusual governmental delays, epidemics, freight embargoes, causes beyond the reasonable control of CITY, or in the CITY's performance of any act related to protecting the public health and safety.
50. **San Diego's Strong Mayor Form of Governance.** All references to "CITY" in this Agreement will be deemed to refer to "the Mayor or his/her designee." This section will remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.
51. **Authority to Contract.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is 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, or other written rules of conduct or governing

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 shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

52. Accessibility Assessment. In accordance with California Civil Code section 1938, City hereby states that the Site has not been inspected by a Certified Access Specialist (CASP). Further, pursuant to California Civil Code section 1938(e), CITY is required to state: A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.
53. Single Use Plastic Reduction Ordinance. Unless an exception applies, CONCESSIONAIRE will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Agreement, CONCESSIONAIRE certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.
54. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
55. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
56. Exhibits. All exhibits referenced in this Agreement are incorporated into this Agreement by this reference. In the event of a conflict between this Agreement and any exhibit to this Agreement, the terms, conditions, and obligations of this Agreement shall control.
57. California Public Records Act. CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY, its elected officials, officers, employees, agents, and representatives harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
 - A. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE

EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

58. Payment Card Industry Data Security Standards (PCI DSS).

- A. PCI Compliance. CONCESSIONAIRE acknowledges and agrees that to the extent that credit card data is collected, processed, stored or transmitted, CONCESSIONAIRE must adhere to the Payment Card Industry Data Security Standards (PCI DSS) and must specifically comply with the CITY PCI requirements described herein.
- B. CONCESSIONAIRE Compliance with Payment Card Industry Security Standards Council Standards. CONCESSIONAIRE must maintain full compliance with all current and applicable Payment Card Industry Security Standards Council Standards (PCI SSC), for all Services performed under this Agreement or other contracts managed by CONCESSIONAIRE. CONCESSIONAIRE acknowledges and agrees that it will ensure that any subcontractors or other service providers that it uses to assist with performance of this Agreement will also maintain full compliance with all current and applicable PCI SSC standards.
- C. Attestation of PCI Compliance. CONCESSIONAIRE must, upon request of the CITY annually on the anniversary of the Effective Date, provide the CITY with a copy of the Level 1 Service Provider attestation of compliance which must be approved and signed by a qualified security assessor (QSA) company recognized by the PCI SSC. Any deficiencies noted in an annual assessment must be communicated to CITY, in writing, within thirty (30) days of the report, and include a remediation date in accordance with the PCI SSC's prioritized approach. Any deficiencies noted in an annual assessment must be remediated at CONCESSIONAIRE's sole cost and expense.
- D. CONCESSIONAIRE Remediation. CONCESSIONAIRE must remediate, in a timely manner and at CONCESSIONAIRE's sole cost and expense, any outstanding audit finding by CONCESSIONAIRE or CITY's QSA as it relates to CONCESSIONAIRE's provision of PCI related hardware or services in compliance with the most current PCI DSS and PCI SSC.
- E. Service Provider Responsibility Matrix. CONCESSIONAIRE must complete a Service Provider Responsibility Matrix (Matrix) in either the form provided by CITY, or in a format approved by CITY, and account for all management services that will be supplied to the CITY as they relate to cardholder data that is stored, processed, or transmitted on behalf of CITY. The Matrix shall be updated in regularly and in a timely manner to reflect any changes in the provision of such management services. Upon its completion, the Matrix is hereby incorporated into the Agreement and any updates or revisions to the Matrix will also be incorporated into this Agreement without need for

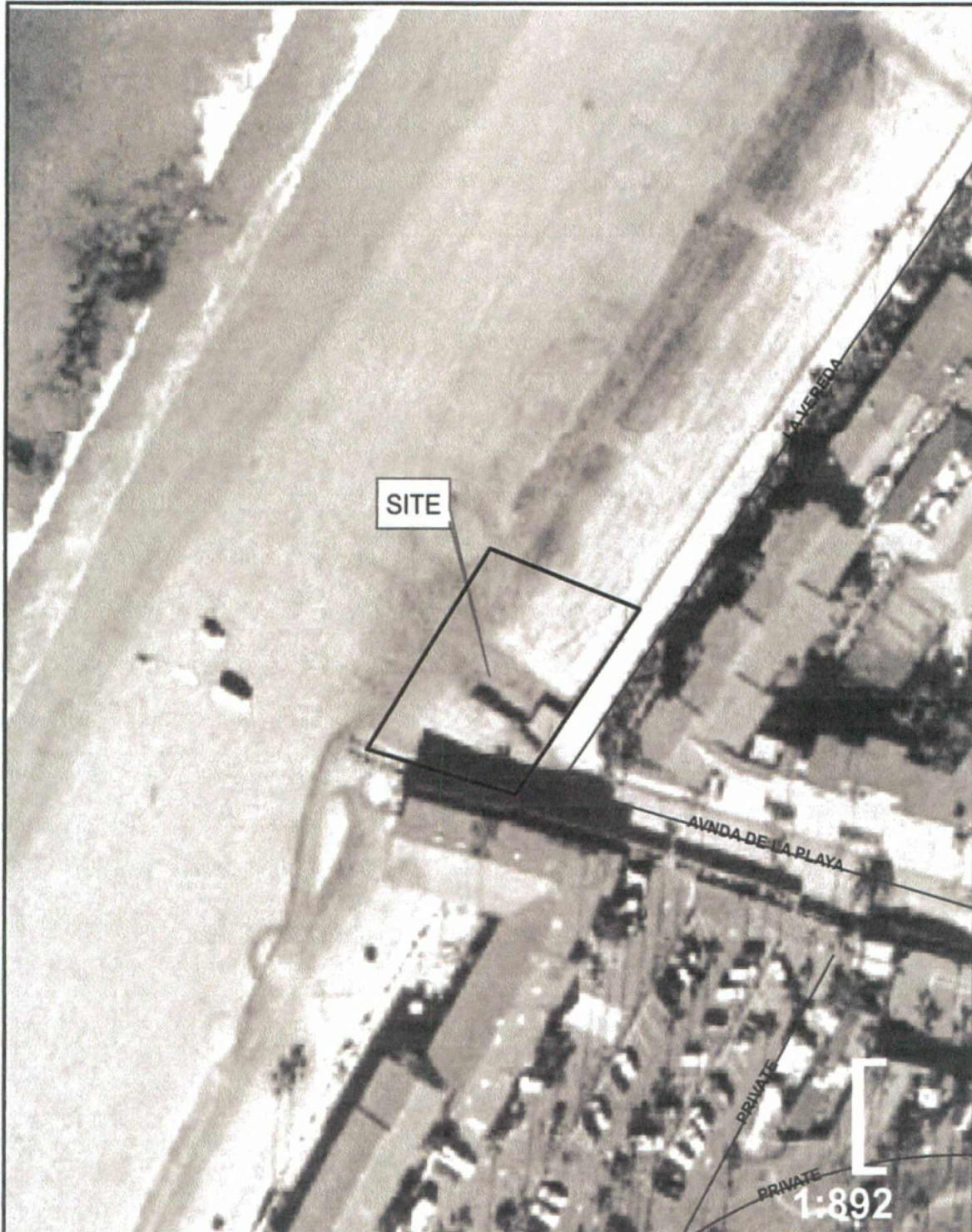
an amendment.

- F. CONCESSIONAIRE must reply immediately to the CITY, via email and phone call, any known device tampering or other breach, intrusion, or unauthorized access to cardholder data stored by or on behalf of CONCESSIONAIRE. For purposes of this subsection a, reporting to the CITY's Information Security Officer (CISO) and the Office of the City Treasurer will be deemed sufficient for notifying the CITY. CONCESSIONAIRE also agrees to assume responsibility for informing all affected individuals in accordance with applicable law.

Exhibit A: Site Map
Exhibit B1: Primary Kayak Tour Schedule
Exhibit B2: Secondary Kayak Tour Schedule
Exhibit C: Kayak Concession Requirements
Attachment A: Operating Plan

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT A
Site Map



IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

LA JOLLA SEA CAVE KAYAKS, LLC, a California
limited liability company

By: Jennifer Kleck
Name: Jennifer Kleck
Title: Managing Member

THE CITY OF SAN DIEGO, a California municipal
corporation

By: Cybele L. Thompson
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Date: _____

BY: _____
Name: _____
Planning Department

Approved as to form this

5th Day of May, 2020

MARA W. ELLIOTT, City Attorney

BY: Catherine Morris for Kathy Steinman
Name: Catherine Morris
Title: Deputy City Attorney

EXHIBIT B-1
Primary Kayak Tour Schedule

	TIME SLOT	COMPANY		TIME SLOT	COMPANY
1	9:00		33	14:20	
2	9:00		34	14:20	
3	9:20		35	14:40	
4	9:20		36	14:40	
5	9:40		37	15:00	
6	9:40		38	15:00	
7	10:00		39	15:20	
8	10:00		40	15:20	
9	10:20		41	15:40	
10	10:20		42	15:40	
11	10:40		43	16:00	
12	10:40		44	16:00	
13	11:00		45	16:20	
14	11:00		46	16:20	
15	11:20		47	16:40	
16	11:20		48	16:40	
17	11:40		49	17:00	
18	11:40		50	17:00	
19	12:00		51	17:20	
20	12:00		52	17:20	
21	12:20		53	17:40	
22	12:20		54	17:40	
23	12:40				
24	12:40				
25	13:00				
26	13:00				
27	13:20				
28	13:20				
29	13:40				
30	13:40				
31	14:00				
32	14:00				

EXHIBIT B-2
Secondary Kayak Tour Schedule

	TIME SLOT	COMPANY
1	9:00	
2	9:20	
3	9:40	
4	10:00	
5	10:20	
6	10:40	
7	11:00	
8	11:20	
9	11:40	
10	12:00	
11	12:20	
12	12:40	
13	13:00	
14	13:20	
15	13:40	
16	14:00	
17	14:20	
18	14:40	
19	15:00	
20	15:20	
21	15:40	
22	16:00	
23	16:20	
24	16:40	
25	17:00	
26	17:20	
27	17:40	

EXHIBIT C
CITY OF SAN DIEGO
KAYAK CONCESSION REQUIREMENTS

The following requirements are subject to revision at any time by the CITY:

A commercial kayak operator issued a Concession by the CITY ("Concessionaire") must continually adhere to all terms and conditions included herein and all applicable laws, and must take all necessary safety precautions to ensure that the public and beach are protected at all times. All requirements are applicable year-round.

1. Ocean Conditions and Safety

Concessionaire must **check the surf report** maintained by the San Diego Fire-Rescue Lifeguards (619-221-8824) each day. Concessionaire must provide information to clients of daily conditions and/or hazards and the dangers inherent in kayaking in open exposed bodies of water and in close proximity to the La Jolla sea caves and its rocky shoreline. Possible hazards include small craft warnings, surf size, high winds, cold water, extreme heat, etc.

Concessionaire and its employees, agents, and/or affiliates must adhere to all directions provided by lifeguards, other representatives of the CITY, or any other officer with authority to enforce local, state, or federal law. In the case of disputes, supervisory personnel may be summoned, but the decision of lifeguards, City representatives, or other officers with proper authority regarding any particular matter on a given day is final and should be brought to the attention of the area lifeguard lieutenant as necessary at a later time.

Concessionaire will be aware of and adhere to the four stages of Hazard Alerts implemented by the CITY's Lifeguard Division which are as follows:

- Hazard Alert 0 – Conditions normal, permitted activity allowed.
- Hazard Alert 1 – Conditions warrant increased safety measures. Sea cave entry or boat launch restrictions may be applied independent of each other. Individual rentals may or may not be allowed. Determinations to be made by on-duty lifeguard supervisor.
- Hazard Alert 2 - Conditions warrant increased safety measures. Individual rentals are not allowed, guide to client ratios may be increased (one guide for every four kayak tour boats) and/or launching/retrieving staff may be increased independent of each other. Determinations to be made by on-duty lifeguard supervisor. Additionally, kayaks are not allowed into the La Jolla sea caves.
- Hazard Alert 3 – No commercial kayak operations allowed.

The on-duty lifeguard supervisor will determine if a Hazard Alert 1, 2 or 3 is needed, and Concessionaires shall be notified when a Hazard Alert is implemented. The decision by the lifeguard supervisor is non-negotiable and shall be adhered to immediately by the Concessionaire.

Lifeguards reserve the right to close the boat launch and/or terminate any kayak tours and/or rentals based on safety considerations.

2. Identifying Markers

Concessionaire, its employees, agents, and representatives must be readily identifiable as authorized employees and/or agents of the Concessionaire through the wearing of a company shirt or rash guard with a logo in plain view. Concessionaire's kayak tour guides must be clearly identifiable from clients through the use of such means.

All kayaks used in Concessionaire's commercial kayak operations shall be marked with the name or logo of the Concessionaire and an individual, non-duplicated number. The markings shall be plainly visible and legible from a distance of fifty (50) feet.

To ensure on-water accountability, Concessionaires shall comply with a flag identification system as defined by the CITY. The CITY reserves the right to amend the flag identification system at any time as it deems appropriate.

- Rental and guide kayaks on the water must have a flag attached to the stern of the vessel which designates its current use.
- The flag should be a minimum size of 8" x 11" and must be visible from shore.
- All individual rental kayaks shall have a blue flag.
- All tour guide kayaks shall have a red flag.

3. Concession Site/Location

All business transactions must be conducted fully within Concessionaire's storefront address. Concessionaire shall meet all kayak tour participants inside of the Concessionaire's store and conduct all orientation/training inside of its store or in the area designated by the CITY. Any violation of this provision by Concessionaire, its employees, and/or its agents will be considered a breach of Concessionaire's Concession Agreement and may constitute cause for its suspension or termination.

4. Boat Launch/Operator Vehicles

Concessionaire is fully responsible for ensuring that its vehicles and trailers used for the transport and delivery of kayaks and/or equipment, utilizing the boat launch comply with the following:

- Vehicles and trailers must possess current registration.
- Concessionaires must provide off-street overnight parking for vehicles and trailers.
- Vehicles must be "all-wheel drive," in that power is supplied to both axles and all wheels.

- Vehicles and trailers must be clearly marked with the Concessionaire's name by either permanent or magnetic signs, and plainly visible and legible from a distance of one hundred (100) feet.
- The boat launch area must be kept clear at all times. Kayaks must not be left in a position that obstructs free use of the launch area.
- Concessionaire, its agents, and/or employees must at all times obey all posted signs, curb markings and any direction given by the CITY.
- Except where exiting the beach, Concessionaires shall ensure sand from transport vehicles is not deposited on City streets or alleys.
- All concessionaire vehicles must come to a complete stop at the entrance to the boat launch and be directed onto the beach by an employee outside the vehicle who monitors the path for safety.

In addition to the foregoing, Concessionaire is responsible for ensuring that all vehicle operators possess a valid California Driver's License.

5. Concession Site - Regulations

All outfitting and rigging of kayaks as well as any training of clients will be conducted on dry land at a CITY designated site. The boat launch area must be kept clear at all times. Kayaks and equipment must not be left in a position that obstructs the free use of the boat launch area.

Space near the La Jolla Shores Boat Launch may be made available for Concessionaires. The number of kayaks allowed to be stored on the beach, owned or controlled by a Concessionaires, will be determined by the CITY. Kayak paddles must be stored in a neat and orderly manner by use of a rack or hammock, placed against the seawall within designated storage areas.

Concessionaire vehicles must adhere to a fifteen (15) minute drop off and pickup of kayaks and materials on the beach.

Concessionaire must adhere to all of the laws, rules, and guidelines for traffic at the boat launch and adjacent streets, including but not limited to speed, staging, parking, and traffic flow with extra care and concern given for the safety of the public.

6. Maximum number of tour participants/ Student to instructor ratios

Concessionaire is fully responsible for ensuring that kayak tours shall never exceed twelve (12) kayaks total consisting of ten (10) client kayaks and two (2) kayak guide kayaks, and must adhere to the following criteria:

- No more than one (1) tour allowed for each designated time slot.

- There shall be at least one (1) kayak guide for every five (5) client kayaks (5:1). In the event that a kayak tour exceeds five (5) client kayaks, an additional kayak guide will be required.
- The ratio of client individuals to kayak guides shall never exceed ten (10) client individuals to one (1) kayak guide (10:1), regardless of the number of kayaks.

7. Water Activity Zones and Areas of Special Interest

Concessionaire is fully responsible for ensuring that all kayak tours adhere to San Diego Municipal Code section 63.20.2 defining Water Activity Zones and buoy demarcated use areas at all times including, but not limited to, swim zones, no board surfing zones, boat launch zone and no boat zone.

All kayak rentals, whether for tours or for individuals, shall adhere to San Diego Municipal Code section 63.20.9 defining rules for boat beaching and launching.

Concessionaires will ensure extreme caution is taken when entering Sea Caves and that courtesy and professionalism is extended to others in the area. Access to the Sea Caves is a privilege that could be revoked by the City at its sole discretion.

Concessionaire shall advise individual kayak rentals to not venture near the rocks or the caves. Additionally, Concessionaire will advise individual kayak rentals to remain outside of the swim lane at La Jolla Cove.

Concessionaires will ensure that all kayak guides, kayak tours and individual kayak rentals are knowledgeable about and comply with restrictions set forth in the Marine Mammal Protection Act of 1972 ("MMPA"), which prohibits the harassment of many mammal species including seals, sea lions, dolphins, and whales. Violations of the MMPA include, but are not limited to, any act that torments, annoys, injures, disrupts, or disturbs marine mammals. This includes attempting to pursue, swim with, pet, touch, or elicit a reaction from the animals. Concessionaires will ensure responsible viewing of wildlife by employees and customers and follow the guidelines below set forth by the NOAA Fisheries Service.

- Observe wild dolphins, porpoises, and seals/sea lions from safe distances of at least 50 yards.
- Observe large whales from a safe distance of at least 100 yards.
- Limit overall viewing time to no more than 30 minutes.
- Avoid circling or entrapping marine mammals between watercraft or watercraft and shore.
- Avoid abrupt movements or loud noises around marine mammals.
- Avoid separating mother/calf pairs.

Any violation of San Diego Municipal Codes or any other laws, statutes, or codes applicable in the State of California by Concessionaires or individuals may result in the issuance of citations.

8. Equipment:

Concessionaire will ensure that at least one (1) kayak guide on each kayak tour must have a U.S. Coast Guard approved visual and auditory signaling device, a handheld VHF radio and/or cell phone, and that proper training is provided in their use.

Concessionaire will also ensure that all individuals, including clients and guides, participating in kayak tours of the La Jolla sea caves area shall possess and wear a properly fitting and secured helmet, appropriate for whitewater use.

Concessionaire will maintain all kayaks and operational equipment in proper working order and condition.

Concessionaire will not deposit any kayaks at the designated rental kayak storage area prior to 8:00 a.m. and all kayaks must be removed before dark.

Concessionaire must provide an employee to monitor the rental kayak storage area at all times when any kayaks or equipment are on the beach.

Concessionaire shall maintain the kayak storage area in a neat and orderly manner at all times and shall ensure that all rental kayaks and/or equipment shall be neatly stacked within the designated area so as not to impede any other activities within the boat launch area.

Storage areas will be assigned to Concessionaires by the CITY. The CITY has the right to adjust the location of the rental kayak storage sites, at any time, in its sole discretion based on safety or other considerations.

9. Waivers

Concessionaire must have on file a signed waiver from each individual renting a kayak and each individual participating in a kayak tour, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers, and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under the Agreement.

10. Safety Precautions/Emergency Response Plan

Concessionaire must maintain a written record of each client's full name, local contact number, and kayak identification number to aid with locating the client in the event of an emergency.

Concessionaire shall provide each rental kayak client with a waterproof map of the adjacent water area, clearly depicting all Water Activity Zone Areas as set forth in San Diego Municipal Code section 63.20.2, known hazards, and off-limits areas.

Concessionaire is fully responsible for making each client aware of known hazards, off-limit areas, and Water Activity Zones, preferably by referencing the provided map, and that any violations may result in a citation and/or injury.

Concessionaire will provide a properly fitting U.S. Coast Guard approved Type III or Type V personal flotation device to each client.

If a client reports an injury to Concessionaire or Concessionaire is aware of an injury or accident that requires medical attention or services and the injury occurs during the performance of Concessionaire's services from launch to beaching, Concessionaire shall immediately inform the SD Fire-Rescue Lifeguards in writing of such injury.

Concessionaire will keep a file on record of all accident reports for three (3) years after each event.

11. Minimum Requirements for Guides

Concessionaire will ensure that all kayak guides are at least eighteen (18) years of age.

Concessionaire is fully responsible for ensuring that its kayak guides complete and maintain the minimum qualifications as outlined below:

- A valid Basic First-Aid certification from the American Red Cross or the equivalent.
- A valid CPR certification by either the American Red Cross as a Professional Rescuer or American Heart Association as a Healthcare Provider or the equivalent.
- Certificate of completion for the Lifeguard Division Kayak Guide Orientation Training Course.
- A certificate of completion of kayak guide training. Each Concessionaire will be required to provide annual training for its guides. An outline of training subjects and course content is required with the Concessionaire's Operating Plan and must at the minimum include the following:
 - Review of La Jolla coastal geography
 - Review of Kayak Concession Requirements (as set forth in Exhibit C)
 - Weather and surf conditions
 - Hazards: large surf, wind, location of local caves and cliffs
 - Emergency action plan
 - Flotation devices, emergency signaling devices
 - Instructing others on the topics of kayak paddling and maneuvering skills

- Local rules and laws pertaining to Water Activity Zones
 - Laws pertaining to the La Jolla Ecological Preserve
 - Signs and symptoms of hypothermia
 - Types of different local marine life
 - Review of general Lifeguard Operations
 - Proper use of marine band VHF radio and cell phone
 - Applicable federal and state laws and regulations for vessel operation
- Supervise and instruct clients and be fully capable of giving a suitable orientation talk to all clients while in kayaks on relevant subjects which may include, but are not limited to, overall safety, personal flotation devices, emergency signaling devices, and kayak paddling/maneuvering skills.
 - Possess a general knowledge of emergency access and evacuation routes, and how to summon and assist any emergency response personnel.

Concessionaire may request variations from the kayak guide qualifications set forth in this section. Any request for variation must be made in writing to the Fire-Rescue Department, Lifeguard Division and the request shall substantiate that the variation does not reduce the intent of the qualification set forth in this rule.

Documents relating to the requirements of this section shall be kept at the Concessionaire's storefront for inspection by the City representative.

Concessionaire understands and fully agrees that keeping patrons safe while engaged in kayak tours and kayak rentals shall be its highest priority. Should San Diego Fire-Rescue Lifeguards or other official City personnel find violations or a pattern of violations of any requirement of the Concession Agreement, then a "Violation of Concession Agreement/Safety Notice" will be issued by the Fire-Rescue Department Lifeguards Division.

12. Violations/Safety Notice

The CITY reserves the right to perform inspections and/or reviews with or without advance notice. These inspections and/or reviews may be for any or all aspects related to the Concession Agreement and its attachments, including, but not limited to, ensuring that Concessionaire: (a) possesses all of the requisite certificates and qualifications of its tour guides; (b) properly addresses all safety issues; (c) adheres to the Tour Schedule; and, (d) maintains necessary records pertaining to kayak renters and kayak tour participants. Violation of any aspect of the Concession Agreement may result in suspension or revocation of the Agreement. With regard to safety, the CITY or any other officer with authority to enforce local, state, or federal law, has the right to terminate any tour or individual kayak rental if there is a violation of any safety requirements.

If a Concessionaire, its employee, agent, or representative is issued a "Violation of Concession Agreement/Safety Notice" or convicted for any violation related to their kayak

operations, the CITY shall evaluate the conviction or notice of violation for an appropriate and reasonable sanction, up to and including a suspension or revocation of the Concession Agreement. Such punishment will be in addition to any penalty assessed by the courts.

13. Additional Concession Stipulations

- Concessionaire must at all times have all valid licenses and permits to do business within the City of San Diego and must have a storefront, not located on CITY beach or park property, where business shall be conducted.
- No business transactions or solicitation for business are permitted on CITY property (i.e. advertising, signing of waivers, collecting of money, etc.). All business transactions must be conducted within Concessionaire's storefront address stated in the Agreement.
- Concessionaire will ensure clients maintain awareness and consideration of the public and businesses while transiting to and from the boat launch so as to not create a negative impact on others.
- Kayak equipment should not be placed on sidewalks or public thoroughfares.
- Sidewalks in front of and to the side of Concessionaire's stores must be kept clean of sand and dirt at all times.



Date of Notice: September 5, 2019

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: RFP #271335 001 and Kayak Concessions Agreement for Operation of Kayak Concessions at La Jolla Shores Beach

COMMUNITY PLAN AREA: La Jolla

COUNCIL DISTRICT: District 1

LOCATION: La Jolla Shores Community Boat Launch and Beach Area, located at the corner of Avenida de la Playa and La Vereda.

PROJECT DESCRIPTION: Kayak Concessions Agreement (Agreement) between the City of San Diego and the successful proposer to the Request for Proposal (RFP) #271335 001 to operate Kayak Concessions at La Jolla Shores Beach. Pursuant to the Agreement, the successful proposer will be allowed to operate Kayak Concessions which would involve the conducting of kayak tours and rentals, the sale of souvenir photos and videos of the tours, as well as delivering and removing rental and tour kayaks serving the general public under the terms and conditions of the Agreement.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; and where the exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Jayne Vanderhagen, Supervising Property Agent
MAILING ADDRESS: Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A, San Diego, CA 92101
PHONE NUMBER: 619-236-6210

On September 5, 2019, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**September 19, 2019**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 9/5/2019

REMOVED: 9/23/2019

POSTED: E. Pasqua

ADISAKI 1210

7-17-19

ALL

Attachment A: Operating Plan

1. Overview of Operations	1
2. Primary Tour Slots & Historical Use	3
3. Individual Rentals vs Secondary Launch Times	3
4. Addressing the Kayak Concession Requirements	4
4.1. Ocean Conditions and Safety	4
4.2. Identifying Markers	5
4.3. Concessions Site / Location	5
4.4. Boat Launch and Vehicles	5
4.5. Concession Site Regulations	6
4.6. Tour Composition and Staff Ratios	6
4.7. Water Activity Zones and Areas of Special Interest	6
4.8. Equipment	7
4.9. Waivers	8
4.10. Safety Precautions / Emergency Response Plan	10
4.11. Minimum Requirements for Guides	11
4.12. Violations / Safety Notice	13
4.13. Additional Concession Stipulations	13
5. A Partnership with the Local Community	14
6. Available Business Space	15
7. Organizational Structure/Management Team	16
8. Financials	17
9. Revenue Projections	17
10. Operator of the Concession	18
11. Emergency Response Plan	19
12. Equipment Provided	35

1. Overview of Operations

La Jolla Sea Cave Kayaks, LLC (SCK) requests seven (7) Primary Tour Slots and selects "Option C" with two (2) Secondary Launch Times and four (4) Individual Kayak Rentals.

SCK kayak fleet consists of 22 tandem kayaks and 6 single kayaks.

Maximum of 10 guest kayaks (up to 20 guests) per tour with a maximum guest kayak to guide ratio of 5 to 1, and maximum guest to guide ratio of 10 to 1.

SCK offers only guided kayaking tours and kayak rentals. We do not offer snorkeling nor photography packages, nor any other activities.

Hours of Operation & Prices (April 1, 2020 to March 31, 2021):

Dates	Days / Week	Hours	Closures	Single Price	Tandem Price
April 1 - June 14	6 days	9am - 5pm		\$ 49 - \$ 89	\$ 69 - \$ 110
June 15 - Sept 14	7 days	9am - sunset	July 4th	\$ 69 - \$ 89	\$ 89 - \$ 110
Sept 15 - Oct 31	5 days	9am - 5pm		\$ 49 - \$ 89	\$ 69 - \$ 110
Nov. 1 - Feb. 29	3-5 days	10am - 4pm		\$ 49 - \$ 69	\$ 69 - \$ 89
March 1 - 31	5-6 days	9am - 5pm		\$ 69 - \$ 89	\$ 89 - \$ 110

Notes on pricing:

Our reservations software and our website allow us to instantly adjust pricing to account for demand, weather forecasts, holidays, etc. On a weekly and daily basis, this allows us to maximize revenue when demand is high, and offer great bargains when demand is low without resorting to mega-discount sites like Groupon. We believe that such sites steal City revenue and over-extend businesses past the limits of safety and customer satisfaction. Our system allows us to provide a higher quality of service while still letting guests find a tour that fits their budget. By aggressively managing pricing to match demand, we expect to LOWER our average tour price, yet increase revenue significantly by filling more tours. During non-peak times, we offer extreme discounts (as little as \$10/person) to worthy groups and organizations.

Summary of Tour Content

(Details can be found in Attachment B: Staff Manual)

- Guides outfit guests with PFDs and helmets, ensuring a proper fit
- Group introductions where guests and guides introduce themselves
- Using a map, guides provide an overview of the geography and the 5 different marine environments they will be visiting, along with some of the animals they may be seeing. (see “Map Talk” in Staff Manual). Guides take this opportunity to set expectations about cave entry, and to emphasize the remarkable beauty and diversity outside the caves. We have found over the years that “sea cave” tours draw the crowds, but emphasizing the caves often leads to customer dissatisfaction when cave entry is unsafe. In reality, the La Jolla State Marine Reserve is incredibly unique on the entire West Coast because of its relatively easy open ocean access and the close proximity of five overlapping marine environments. We choose to emphasize these qualities over the caves.
- At the beach, guides provide a thorough how-to “paddle talk” (see Staff Manual) as well as a safety briefing to inform guests of the risks that exist and how to avoid them (see Staff Manual).
- During the tour, guides provide informational rest breaks at each environment to discuss them in greater depth and look for the local residents. These stops occur over the sandy flats, the rocky reef, near the sea cliffs, and over the deep canyons and kelp forests. (See “Tour Contents” in the Staff Manual)
- After landing, guests are guided to the public showers to rinse off sand and back to the shop where guides dole out recommendations on local eateries.

Consideration:

In consideration of a permit award, La Jolla Sea Cave Kayaks, LLC will pay the City of San Diego a minimum fee calculated as a percentage of previous years fees (approximately \$48,000 for the first permit year), OR 12% of gross concession receipts, whichever is greater. SCK acknowledges annual adjustments to these numbers per Agreement Terms.

2. Primary Tour Slots & Historical Use

La Jolla Sea Cave Kayaks, LLC requests seven (7) primary tour slots. During the last permit cycle, SCK operated seven (7) primary tour slots, two (2) secondary tour slots, and four (4) kayak rentals. We did not offer other activities such as snorkeling nor photography packages. This perfectly suits our strengths, our capacity to store kayaks, and to accommodate traffic flow of customers. We are able to operate efficiently at this level and to focus on what we know and do best. We believe this is the optimum number of tours (and rentals) to allow us to remain the most professional concessionaire in La Jolla and we seek the same for the permit cycle beginning in 2020.

3. Individual Rentals vs Secondary Launch Times

La Jolla Sea Cave Kayaks, LLC selects **Option C: Four (4) Individual Kayak Rentals and Two (2) Secondary Launch Times.**

We request the same schedule of tour slots as the previous permit cycle:

9:20	10:40
11:20	12:40
1:20	2:40
3:20	4:40
5:00	

4. Addressing the Kayak Concession Requirements

La Jolla Sea Cave Kayaks, LLC has a long history of having the fewest violations of all the concessionaires. Our 14-year compliance with Exhibit C can be verified by Lifeguard records. Because Managing Member Jennifer Kleck has more training and experience in advanced sea kayaking skills than any member of the San Diego Lifeguards, SCK company protocols sometimes exceed Lifeguard requirements. While the following section addresses the specific requirements of Exhibit C, many of the protocols, policies, and staff evaluation procedures pertaining to this section can also be found in the Staff Manual.

4.1. Ocean Conditions and Safety

Our General Management team is primarily responsible for day-to-day risk assessment and risk management. In order to be successful at this, they must be primarily in charge of customer contact. General Managers scan swell and weather forecasts about 1 week ahead of our operations. The majority of our bookings occur within a week of the outing and this allows us to screen participants against expected conditions and make booking recommendations focused on safety rather than dollars. For example, if a family with young children want to book during a swell event, we can let them know that the risks are likely to be elevated and either steer them towards a safer time frame, agree that the risks are acceptable for their children, or recommend a different activity. Regardless of the long-term forecast, the first General Manager to arrive each day calls the Lifeguard beach report and records it on our prominent white board. Guides are required to note these conditions, but more importantly, are trained to constantly assess actual observable conditions throughout the day as they change with the rise and fall of tides, shifting wind, and evolving swell conditions. Guides on earlier tours share observations with guides on later tours and beach-duty shifts provide ample opportunity to assess the day. While SCK has often implemented our own safety controls by the time Lifeguards impose them, all guides know that "Hazard Alert" flags require additional safety measures as determined by the Lifeguards and that these are in effect immediately. Any guides on the water are called and informed of additional safety restrictions that affect them.

- Hazard Alert 1 = Additional safety measures as determined by Lifeguards.
- Hazard Alert 2 = No cave entry, no rentals, plus any additional measures as determined by Lifeguards.
- Hazard Alert 3 = Immediate termination of all commercial activity. Active tours return.

4.2. Identifying Markers

- All employees wear SCK logo t-shirts.
- Beach staff wear rash guards marked with our logo and "SCK TEAM".
- Guides wear SCK TEAM rash guards and yellow, professional-level PFDs marked "SCK" on the back, and red helmets. Guest PFDs are red or blue with no company mark.
- SCK kayaks are yellow, and marked "SCK" with a non-duplicating number in 4" tall black letters.
- Guide kayaks carry a red flag on the stern.
- Rental kayaks carry a blue flag on the stern.

4.3. Concessions Site / Location

All business transactions take place within 2164-68 Avenida de la Playa, including any payments, sales, document signing, and orientation. Paddle training is conducted at the Lifeguard-designated beach location.

4.4. Boat Launch and Vehicles

SCK owns a 4x4 pickup truck for kayak delivery and pickup. We maintain current registration and a commercial insurance policy on this truck. The truck is parked off-street at 7683 Caminito Coromandel in La Jolla overnight. Magnetic signs with 8" black lettering indicate "SCK" and are displayed during operations. Brooms are stored in the truck and sand is swept from it daily while on the beach to keep the sand where it belongs. Staff are expected to behave in a professional and respectful manner while performing all of their work duties. When transporting kayaks, this means driving slowly, respecting all traffic laws, yielding to other vehicles when appropriate, yielding to pedestrians always, and keeping our kayaks and gear stacked neatly in our designated storage space. Drivers are expected to come to a full stop before driving onto the beach, proceeding only with the aid of a ground escort to ensure the safety of beach users.

4.5. Concession Site Regulations

The Concession Site is used by multiple concessionaires, the public, and the Lifeguards. SCK staff are expected to behave in a respectful manner towards all of these groups at all times. This means keeping our kayaks, equipment, and groups confined to our designated space, and limiting the amount of time that we intrude beyond this space to loading and staging periods of less than 15 minutes.

4.6. Tour Composition and Staff Ratios

Tours consist of a maximum of 10 guest kayaks. There is one guide for a maximum of 5 guest kayaks or a maximum of 10 participants. The maximum number of kayaks on any tour (at any tour time) is never to exceed 12 (10 guest and 2 guide kayaks).

4.7. Water Activity Zones and Areas of Special Interest

All guides are expected to respect other water users and City Municipal codes that regulate user areas. Kayaks are not permitted to beach anywhere but the Concession Site and must stay seaward of breaking waves to prevent collisions with swimmers, surfers, and rocks. Kayaks are not permitted in the swim zones in front of the La Jolla Beach and Tennis Club or extending from La Jolla Cove to the ½ mile buoy and must yield right-of-way to swimmers and snorkelers anywhere.

Guides are trained in the substance of the Marine Mammal Protection Act, and to recognize subtle changes in the behavior of wildlife in order to judge when they have approached too closely, stayed too long, or otherwise disturbed the animals. They are expected to educate tour guests about the importance of not disturbing wildlife.

Renters are given an orientation of the area including hazards and Water Activity Zones. They are given a waterproof map that also indicates these areas. The back of the map lists emergency procedures, restricted activities and areas, and wildlife viewing guidelines. Our rental waiver lists prohibited areas and activities and other restrictions and by signing it, participants agree to follow those regulations (see Section 4.9 "Waivers").



4.8. Equipment

Kayaks and equipment are delivered to the beach after 0800 and removed by sunset. All equipment is kept neatly stored in City-designated areas and particularly clear of traffic-flow areas and Lifeguard emergency access routes. Once on the beach, kayaks and equipment are monitored by a team member.

Team members are trained to assess kayaks and equipment for problems every time they handle a piece of equipment. Any problems are either immediately repaired, or the equipment is removed from circulation until it can be addressed.

Every guest and guide are outfitted with a quality, Coast Guard approved Type III PFD that is adjusted for fit by an SCK team member, and with a helmet approved for whitewater use. We have youth PFDs that range from 30-50lbs, and 50-90lbs. Appropriate sizing is essential. Rental guests are not fitted with helmets.

Every guide carries a tow rope and a whistle. At least one guide additionally carries a basic first aid kit, a signaling mirror, and a cell phone.

4.9. Waivers

Every participant is required to complete one, and a parent or guardian must complete one for each minor. These are kept on file as required by law and City regulations.

La Jolla Sea Cave Kayaks, LLC
2164-2168 Avenida de la Playa, La Jolla, CA 92037
Participant Agreement, Release, and Acknowledgment of Risk

Last Initial _____

In consideration of the services of La Jolla Sea Cave Kayaks, LLC, their agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on their behalf, including the City of San Diego, its agents, officers, employees, and representatives (hereinafter collectively referred to as SCK), I hereby agree to release, indemnify and discharge SCK, on behalf of myself, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. I acknowledge that kayaking on the Pacific Ocean entails known and unanticipated risks which could result in physical or emotional/psychological injury, paralysis, death, or damage to myself, to property, or to third parties. I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. The risks include, among other things: boat capsizing; large waves; high speed collisions with rocks, objects, swimmers, or other watercraft; prolonged exposure to cold water; hypothermia; accidental drowning; tidal conditions and currents; mental anguish or trauma; overexposure to sun or cold; eddies and whirlpools; lightning; aggressive and/or poisonous marine life; wrist, arm, shoulder, neck or back injuries; slips and falls while walking on shore; and rapidly changing adverse weather and water conditions. Furthermore, SCK guides and employees have difficult jobs to perform. They seek safety, but they are not infallible. They might be unaware of a participant's fitness or abilities. They might misjudge the weather, the elements, or the sea conditions. They may give inadequate warnings or instructions, and the equipment being used might malfunction.
2. I expressly agree and promise to accept and assume all of the risks existing in this activity. My participation in this activity is purely voluntary, and I elect to participate in spite of the risks.
3. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless SCK and the City of San Diego from any and all claims, demands, or causes of action, which are in any way connected with my participation in this activity or my use of SCK's equipment or facilities, including any such claims which allege negligent acts or omissions of SCK.
4. Should SCK or anyone acting in their behalf, be required to incur attorney's fees and costs to enforce this agreement, I agree to indemnify and hold them harmless for all such fees and costs.
5. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I have no medical or physical conditions which could interfere with my safety in this activity, or else I am willing to assume – and bear the costs of – all risks that may be created, directly or indirectly, by any such condition.
6. In the event that I file a lawsuit against SCK, I agree to do so solely in the state of California, and I further agree that the substantive law of that state shall apply in that action without regard to the conflict of law rules of that state. I agree that if any portion of this agreement is found to be void or unforeseeable, the remaining portion shall remain in full force and effect.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my rights to maintain a lawsuit against SCK on the basis of any claim from which I have released them herein. I have had sufficient opportunity to read this document. I understand it, and I agree to be bound by its terms.

I have medical conditions which may require extra measures for safe participation: _____ (eg pregnancy, asthma, severe allergies, heart conditions, diabetes, shoulder/back injuries, etc.) IF NONE, please write "NONE"

I know how to swim: Yes No Initials _____ (circle one) Swimming ability is not required, but floating in a lifejacket without panic is.

Print Name: _____ Signature: _____

Address: _____ City/State: _____ Zip: _____

Phone: _____ Email: _____ Date: _____

Emergency Contact: _____ Phone: _____

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION
(Must be completed for participants under the age of 18)

In consideration of _____ (print Minor's name(s))
being permitted by SCK to participate in its activities and to use its equipment and facilities on this Date: _____, I further agree to indemnify and hold harmless SCK from any and all Claims which are brought by, or on behalf of Minor, and which are in any way connected to such use or participation by Minor.

Parent/Guardian Signature: _____ Parent/Guardian PRINT: _____

GUIDES:

TOUR TIME:

Rental Agreement – Indemnity – Hold Harmless

Owner: La Jolla Sea Cave Kayaks, LLC - 2164/68 Avenida de la Playa, La Jolla, CA 92037 – (858)454-0111

1. **INDEMNITY AND HOLD HARMLESS:** Customers shall indemnify, hold harmless and release La Jolla Sea Cave Kayaks, LLC, its owners, officers, managers, participants, employees, volunteers, agents and representatives, as well as the City of San Diego, its agents, officers, employees, and representatives (hereinafter collectively referred to as "SCK"), from all suits, actions or claims of any character, type or description brought or made for, or on account of any injuries or damage received or sustained by any person arising out of, or occasioned by, the customer's use or operation of the equipment. Such indemnity shall be effective without regard to determination as to who may or may not be at fault or in any manner negligent with reference to such injury or damage.
2. **INSPECTION:** The customer agrees that before using the equipment, he or she will personally inspect the equipment.
3. **CUSTOMER'S RESPONSIBILITIES:** The customer agrees that he or she:
 - a) is not under the influence of intoxicants, medication or any other disabling substance and has no condition that would tend to cloud customer's mental judgment, nor physical condition which may interfere with their safe use of the equipment.
 - b) is using the equipment at his or her own risk and that the use of such equipment involves some danger of injury to person or property, even death.
 - c) is responsible to owner for any and all damage or injury caused to the equipment, to property of any other person and to injury to any person or persons, and that all costs of such damage or injury shall be borne of the customer.
 - d) has sufficient swimming skills; and
 - e) has sufficient skills to properly use the rented equipment.
4. **PROHIBITED USES:** Use of the equipment in the following manner is prohibited and constitutes a breach of this contract:
 - a) Performing acts of "showing off" which create situations of risk to the equipment and/or persons.
 - b) While under the influence of intoxicants, medication, or any condition that may impair good judgment or physical ability.
 - c) Entering caves or landing on any section of coast except the designated "boat launch", kayaking anywhere there are breaking waves except to launch and land, kayaking in or across any "swim zone" or in any other restricted area.
 - d) Closely approaching wildlife or in any way altering their normal behavior/activity or causing distress.
5. **RULES AND REGULATIONS:** The operator of this equipment must obey any rules set forth by the owner including:
 - a) Rescues for any reason other than equipment failure will be charged to the customer.
 - b) Customers will not enter the sea caves.
 - c) Customers must always wear the provided PFD/life jacket fully buckled/zipped and properly adjusted.

Failure to follow the terms set forth in this agreement will result in loss of rental equipment, and no refunds will be issued. Violations may result in citations or fines by San Diego Lifeguards which are the responsibility of the customer.

Name: _____ Phone: _____
Address: _____ City: _____
State: _____ Zip: _____ email: _____

I know how to use the equipment; I assume all risk of such use and will pay for all damages caused to such equipment or to persons or other property occasioned by such use. I have read and understand this agreement.

Signature: _____ Date: _____

**PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION
(Must be completed for participants under 18 years of age)**

In consideration of _____ (print Minor's name) being permitted by SCK to participate in its activities and to use its equipment and facilities, I further agree to indemnify and hold harmless SCK from any and all Claims which may be brought by, or on behalf of Minor, and which are in any way connected to such use or participation by Minor.

Parent/Guardian Signature: _____ Date: _____

Parent/Guardian PRINT: _____

TIME OUT: EST. TIME USED: EQUIP: TIME IN: AMT. PRE-PAID:

4.10. Safety Precautions / Emergency Response Plan

All safety precautions and incident and emergency response plans are detailed in Section 11 of this *Attachment A: Operating Plan*.

SCK requires that all participants complete a liability waiver that includes their full name, and an emergency contact number. We also record the kayak number for all renters to aid in locating them if needed.

Renters are given complete briefings indicating restricted water activity zones, dangers/hazards and a map to take with them that includes these areas and a list of rules and regulations. Because no amount of briefings can guarantee a renter's proper actions, SCK has established Essential Eligibility Criteria to help ensure renters are skilled enough to stay safe. While a small percentage of participants are skilled enough to explore independently, we find that most guests benefit from the added safety of a tour and we seek to match our guests with the appropriate activity. Guests who don't meet the following Essential Eligibility Criteria, are not permitted to rent kayaks:

Each RENTAL participant must:

- Be at least 6 years old (Minors must be accompanied by an adult; minors under 14 must kayak tandem with an adult)
- Not exceed the weight limits of the kayak (450lbs for solo or combined tandem weight)
- Breathe independently (i.e., not require medical devices to sustain breathing)
- Independently maintain sealed airway passages while under water or awash in surf
- Independently hold torso, neck and head upright and balanced with no more than 14" of lower back support and optional adaptive equipment to support the thighs **in existing sea and surf conditions**
- Manage personal care independently, or with assistance of a companion
- Manage personal mobility independently, or with a reasonable amount of assistance
- Follow written/visual or spoken instructions and effectively communicate in writing or orally either independently or with assistance of a companion
- Be able to independently turn from facedown to faceup, and remain floating faceup without panic while wearing a properly fitted PFD
- Get in/out of a kayak independently or with a reasonable amount of assistance
- Be able to independently get out and from under a capsized kayak
- Be able to independently re-enter the kayak following deep-water capsize
- Maintain a safe body position while attempting skills, activities, and rescues, as well as have the ability to recognize and identify to others when such efforts would be unsafe given the participant's personal situation
- At least one person in each kayak must have the ability to propel the kayak through the water without assistance and in a stable manner **given existing surf and sea conditions**, recognize where they are at all times using visual landmarks and a map, and return to the launch site.

4.11. Minimum Requirements for Guides

SCK feels strongly that the safety of our guests is a team effort that begins with first guest contact. Consequently, every member of our team is required to meet the following minimum requirements and to be fully qualified to serve as an Assistant Guide. SCK maintains a file for each team member that documents the following:

- Birthdate (minimum age 18)
- Valid Driver's License
- Valid Basic First Aid certificate from the American Red Cross or equivalent
- Valid CPR certificate for the Professional Rescuer or Health Care Provider
- Certificate of completion for the Lifeguard Kayak Guide Orientation Training
- SCK Staff Training checklist and tests of understanding
- Staff Performance Reviews

STAFF TRAINING OUTLINE (Attachment B: Staff Manual contains details of the following)

Training Procedures

Staff are trained in "modules". Senior Guides are primarily responsible for delivering the training content and recording the completion of training modules for each trainee in the trainee's staff file. After the trainee has worked between 10-15 days, they are tested on key material for each module. Assessments may include written tests, oral tests, and demonstrations of skills. Trainees also have their first Performance Review with the first 3 weeks of employment and a second Performance Review 4 weeks later.

Training Modules and Outline of Content

Risk Assessment

SCK uses a 5 step Risk Assessment model developed by Managing Member Jennifer Kleck that forms the foundation of most of our policies and operating procedures. Staff are expected to be able to use this model in order to make decisions regarding the safety of guests, themselves, and the public. The principles of this model are covered in the Staff Manual (for complete content of this vital training component, see "Operating Plan, Section 11") and staff are required throughout training to make use of the model in every activity. Within 3 weeks of employment staff are given a written test. This topic is a significant component of ongoing Performance Reviews.

Incident and Emergency Response Plans

In the event of an incident or emergency, staff are expected to act in a professional manner that reduces impacts to the participants and the company. These procedures are covered in the Staff Manual and through training scenarios.

“Map Talk”

A written “Map Talk” is provided in the Staff Manual. Staff listen to 5-10 “Map Talks” presented by Senior and Primary Guides and are expected to practice their own version until they feel comfortable. With 5-10 days of shadowing Senior Staff, new guides present their own Map Talk to guests under supervision (and with feedback) from a Senior Guide. This mentorship process continues until a Senior Guide signs off their training record.

“Paddle Talk”

Trained through the same mentorship process as “Map Talk”.

Tour Content

Trained through the same mentorship process as “Map Talk”. After shadowing a few tours with Senior Guides, new guides are asked to present information at one or two stops along the tour, increasing the amount of information they provide on each tour until they can narrate the entire tour. Senior Guides provide feedback until a Senior Guide observes an entire tour led by the new staff member and signs off his/her training log.

Communications / Cell Phones (signaling mirrors, whistles, waving paddles, calling 911)

New staff are shown by Senior Guides what equipment they must carry and how to use it. Contextual use is trained through scenarios. Rational performance and appropriate use of equipment during a training scenario will result in a sign-off on a trainee’s log.

Fitting PFDs and Helmets

Staff are trained hands-on how to properly fit PFDs and helmets and then receive lots of practice actually fitting guests while under Senior Staff supervision. Within 5-10 days of employment, new staff are asked to demonstrate for a final sign-off in their training log.

Water Activity Zones / Marine Reserves / Marine Mammal Protection / Laws for Vessels / Lifeguard Ops

Rules and regulations are provided in the Staff Manual. New staff receive hands-on training regarding boundary locations and wildlife behavior while shadowing tours with Senior Guides. New staff must pass a written test of rules and regulations within 10-15 days of employment.

Kayak Concession Requirements

This subject is covered in the Staff Manual and is trained by shadowing Senior Staff. New staff are required to pass a written test within 2 weeks of employment.

Renter Procedures

Staff are required to be able to provide a thorough orientation and safety brief to renters and to know how to monitor them. This is trained by shadowing senior staff and a training log sign-off is given when appropriate.

Truck / Kayak Transportation

New staff are trained in truck procedures by working with Senior Guides. After being accompanied by Senior Staff for 3-6 trips, new staff can operate the truck on their own following final sign-off of their training log by a Senior Guide

Beach Duty

Beach duty shifts involve moving heavy kayaks, maintaining equipment, launch and landing tour guests and renters, and monitoring SCK activities on the water. Staff are trained to protect themselves from exposure and injury. They are trained in professional conduct (VERY limited cell phone use), moving kayaks from staging to storage promptly, keeping gear neat and organized, being constantly aware of the location of SCK tours and renters (using binoculars when needed), etc. Staff are trained by working alongside Senior Guides

Guests with Disabilities

SCK seeks to be inclusive of the widest range of participants as possible, without jeopardizing safety to them, our guides, or the public. SCK has a variety of adaptive equipment to help us safely accommodate guests with disabilities. A section of the Staff Manual addresses how to discuss disability with a guest, and what adaptations can be made. SCK maintains this part of the Staff Manual separately in the office for easy access, along with the book "Canoeing and Kayaking for People With Disabilities" by Janet Zeller. New staff are expected to learn how to use our adaptive equipment and to know our Essential Eligibility Criteria. New staff are given a written test, along with a practical test within 3 weeks of employment.

4.12. Violations / Safety Notice

Proposer's facilities and records will be available for inspection at any time the City requires, with or without notice. Proposer understands and agrees to all terms and conditions of the permit and understands the consequences of non-compliance.

4.13. Additional Concession Stipulations

Proposer's storefront is 2164-68 Avenida de la Playa where all business transactions shall occur lawfully, with all required permits and permissions. Proposer intends that all operations shall be conducted in a professional manner that is respectful of the public, other businesses, and the City.

5. A Partnership with the Local Community

The popularity of kayaking in the La Jolla State Marine Reserve brings over 1000 people a day to La Jolla Shores in the summer. These are visitors who would likely choose a different beach otherwise and many La Jolla Shores and Downtown La Jolla businesses benefit from this influx of customers, especially the restaurants, coffee shops, and bars. We estimate that 60-80% of our guests spend additional money in La Jolla. Conversely, we estimate that only 10-20% of tourists who visit La Jolla for other reasons, end up taking a kayak tour. This makes the kayak concessionaires an important economic driving force in La Jolla, and we are proud to be a part of that. We are also aware that other businesses on Avenida de la Playa and the residential neighborhoods surrounding it, receive no benefit and only negative impacts from the tourist throngs. Proposer Lance Peto is a 26-year resident of La Jolla and owner of the mixed-use commercial building on Avenida de la Playa that houses SCK. As a resident, landlord, and business owner, Lance is actively involved with many organizations that seek to address the varied needs and interests of the community (see "Summary of Experience"). Proposer Jennifer Kleck has been guiding kayak tours in La Jolla since 1995. In those days there were few other kayakers on the water, and it was easy to provide guests with personal, educational, and adventurous experiences. She continues to resist the growing "Disneyland" and "Instagram" mentality in favor of genuine adventure up-close and personal with nature. In keeping with these philosophies, we have created a small company that allows us to provide quality adventure experiences with minimal negative impacts, while still providing reasonable compensation for owners and substantial wages for quality staff retention.

Specific community impact mitigation measures include:

- Employees are encouraged to bike, or park on the east side of La Jolla Shores Dr. to reduce parking congestion. With our small size and efficient operations, our maximum workforce at any given time is only 14.
- Our guests have as much right to parking as other tourists and beachgoers, but we strongly encourage them to use ride shares or taxis to spare themselves parking struggles during peak beach visitation times. If they are driving, we direct them towards less busy streets for parking.
- Guest foot traffic is entirely contained within our shop. With over 300 square feet of open space, we are easily able to accommodate a standing-room crowd of 40 people at a time. By virtue of a relatively small number of well-spaced tour slots, one tour group is departing by the time another arrives to check-in.
- Guests check-in at a front desk and sign waivers, are provided with changing rooms, restrooms, and storage lockers, then outfitted with PFDs and helmets in the shop before finally receiving a brief overview of the area, all within our walls.
- Guests who are unable to ascend our stairs are met downstairs in the courtyard at 2168 Avenida de la Playa where staff members meet them to sign waivers, make payments, etc. There is access to an ADA compliant bathroom via this courtyard. Details can be found in Attachment B: Staff Manual – "Guests with Disabilities."

- No guest sets foot on the street until the entire group is ready to walk to the beach. The group proceeds down Avenida de la Playa together with guides escorting and being mindful to facilitate vehicular traffic flow at street crossings.
- Guests receive paddling and safety instruction in the Lifeguard-designated area on the beach before launching.
- Guests return to the shop via the public showers to rinse off sand and then proceed to the shop via Avenida de la Ribera which reduces congestion on Avenida de la Playa.
- Brooms and brushes are stored in our delivery truck and sand is swept from it daily at the beach to reduce sand accumulation in the alley at our shop.
- The walkways in front of our shop and the alley are swept as needed to keep them free of sand accumulation.

6. Available Business Space

Guest volume is contained entirely within our storefront at 2164-68 Avenida de la Playa. With over 300 square feet of open space, we are easily able to accommodate a standing-room crowd of 40 people at a time. By virtue of a relatively small number of well-spaced tour slots, one tour group is departing by the time another arrives to check-in.

Guests who are unable to ascend our stairs are met downstairs in the courtyard at 2168 Avenida de la Playa where staff members meet them to sign waivers, make payments, etc. There is access to an ADA compliant bathroom via this courtyard. Details can be found in Attachment B: Staff Manual – “Guests with Disabilities.”

Our kayaks are stored in a room opening onto the alley so that loading and unloading of kayaks in no way impacts the flow of automobile or pedestrian traffic, nor visually impacts residents or visitors.

We can store 22 tandem kayaks and 6 single kayaks inside this room. For this reason, we limit each tour to 3 single kayaks. If necessary, guides paddle a tandem kayak as a single from the center seat position. We can accommodate a different mix of singles and tandems for special requests made in advance by transporting kayaks from our off-site storage facility at 5512 Via Bello.

Paddles, seat backs, and guide gear are stored in kayak room. PFDs, helmets, and wetsuits are all stored in the shop.

7. Organizational Structure/Management Team

Oversight Management: Jennifer Kleck and Lanco Peto. The Managing Members of the LLC oversee all aspects of the business including HR policies, bookkeeping, staff training and policies, equipment management, website content, etc.

General Management: Marlie Hooper, Shan Sethna, and Jennifer Kleck. These staff members work under the direct supervision of Jen Kleck and Lance Peto. General managers are responsible for all pre- and post-tour guest contact. They answer phone calls and emails, take reservations and monitor online bookings. They check guests in and supervise guides and beach staff. During Peak Season, there is always at least one General Manager (and often two). We believe that safety begins at the top, and it begins with first guest contact. For example, a mother calls to enquire whether the tour is safe for her 7-year-old. While the Staff Manual states that our minimum age is 6 years, the question is far more complicated than that. One cannot answer that question without knowing the expected conditions at the time of the proposed tour, nor without knowing something about the child and her parents. Is the child a confident swimmer? Has she played in ocean waves before? Has one or both parents kayaked before? It takes a lot of experience and knowledge to be able to match vulnerable participants like children to the right conditions. It also takes integrity to tell a parent that you don't think the tour is appropriate for their child. These are skills that we don't leave to a "phone bank" of teenagers, but that we entrust only to highly qualified and well-paid top-tier managers.

Senior Guides: Cyril Walker, Alex Romero, Michael Jones. Our Senior Guides all have decades worth of experience leading people in risky outdoor environments. They take over where our General Managers leave off with guests. While Senior Guides are often the primary guide responsible for a tour, they are also responsible for training and evaluating seasonal staff and for setting the example for new guides to follow. As with all of our other guides, Senior Guides take beach duty shifts daily. Launching and landing is often the riskiest part of every tour and qualified, over 18-year-olds are essential for safe operations. While other concessionaires hire minors at minimum wage for "beach duty", SCK respects the significant hazards that often exist in the surf zone and will not compromise the safety of our guests to save a few bucks.

Returning Guides: Jack Cowen (for example). These guides may be returning for one year, or several. Their previous training and experience with us make them extremely valuable to SCK and we strive to provide wages that reflect that value and encourage the return of great guides. SCK is proud to foster an environment in which young guides can learn and grow under the mentorship of seasoned veterans and world-class professionals and many of them choose to return for multiple summers. Three of our recent returning guides have included their thoughts on working for SCK in the "References" section.

Seasonal Guides: All new staff members must meet or exceed "Minimum Requirements for Guides" in Exhibit C, Section 11. We seek employees with leadership, as well as ocean experience. We have had excellent success hiring UCSD Outback Adventure Trip Leaders. These young people bring a solid foundation in outdoor leadership and skills to SCK, and SCK provides the opportunity to work in a professional setting where they receive the highest level of industry training and experience. The recommendation of someone like Jennifer Kleck, with a world-class sea kayaking resume, holds significant value towards future employment in the outdoor industry. This fact, along with higher wages than our competition offers, allows us to choose from among the most qualified guides.

8. Financials

See attached 'Operation Plan Financial Addendum'

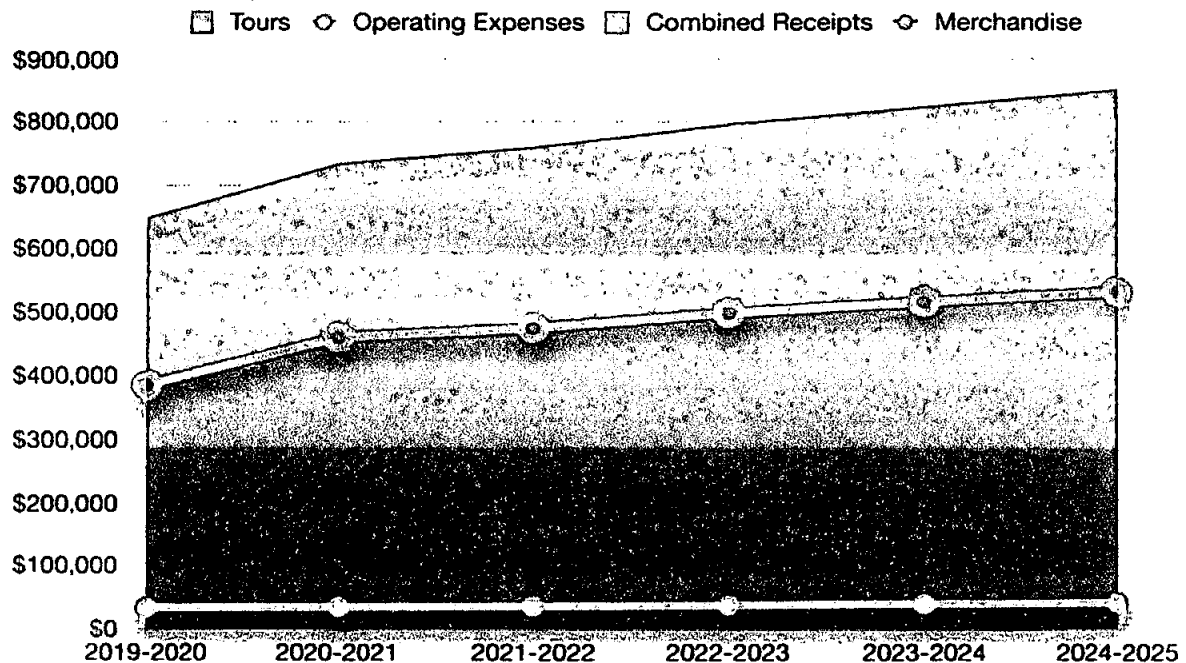
9. Revenue Projections

Projected gross annual revenue for the proposed Agreement term (April 1, 2020 – March 31, 2023)

Based on the strength of our current General Management team, SCK plans to aggressively adjust tour prices to match demand on a daily and weekly basis. We expect a lower average price/person (making SCK an even better and more affordable value to our guests), consequently an increase in customer volume as we are able to compete with our competitors' Groupon deals, and a resulting significant increase in revenue for the 2020-21 permit year. We anticipate steady growth each year after. We make the following conservative projections for the initial 3 year agreement term, plus the optional extensions:

Estimated Gross Receipts & Operating Expenses

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025
Tours	\$ 615,000	\$ 700,000	\$ 725,000	\$ 760,000	\$ 785,000	\$ 810,000
Merchandise	\$ 34,000	\$ 35,000	\$ 36,000	\$ 38,000	\$ 40,000	\$ 42,000
Combined Receipts	\$ 649,000	\$ 735,000	\$ 761,000	\$ 798,000	\$ 825,000	\$ 852,000
Operating Expenses	\$ 383,000	\$ 459,000	\$ 474,000	\$ 498,000	\$ 515,000	\$ 531,000



10. Operator of the Concession

The proposers, Jennifer Kleck and Lance Peto, are the direct operators of the entire concession.

11. Emergency Response Plan

Risk Assessment & Emergency Response Plan

La Jolla Sea Cave Kayaks seeks to avoid emergencies. While we understand the need for protocols that dictate behavior during emergencies, we first and foremost seek to avoid them. Out of principal, we cannot present an Emergency Response Plan without first presenting how we avoid them. Our comprehensive Risk Assessment Model comprises pages ~~1-10~~ ¹⁹⁻²⁸. Please skip to page ~~11~~ ²⁹ for our Emergency Response Plan.

Activity & Venue

SCK offers sit-on-top guided kayak tours and unguided sit-on-top kayak rentals within the Matlahuayl State Marine Reserve (SMR), an approximately 2 square mile area along San Diego's Pacific coastline. The area falls within a large embayment that creates a unique environment more sheltered from Pacific swells than any other stretch of San Diego's coastline. This area is heavily used by families, summer children's camps, and individuals enjoying all manner of water activities including swimming, snorkeling, diving, surfing, body boarding, SUPing, and kayaking. Given its popularity, the area is well supervised by two fully equipped lifeguard towers with unobstructed views of the entire area, except for a couple of small blind spots. The area includes about a mile of sandy beach and about a ½ mile of rocky/cliffy coastline which includes several sea caves. Kelp forests and deep-water canyons are found just offshore. The diversity of environments in this area is responsible for the exceptional marine life (hence the SMR), and for the great popularity with water sports enthusiasts. In particular, the sea caves draw thousands of visitors every year and kayaking has become the favored way to view them. La Jolla kayaking tours rank among the top tourist activities in San Diego on many travel websites.

Launch site: the launch site is a gently sloping sandy beach free from obstructions that has been designated a "small boat launch". It is located about 200 meters from a lifeguard tower. Surf on the beach ranges from less than 6 inches to 5 feet. Particularly during the summer months, surf averages about 1 foot and even in the winter rarely exceeds 4 feet.

Weather and sea conditions: San Diego enjoys an exceptionally moderate climate. Air temperatures range between 65° and 85° in the summer and 55° to 75° in the winter. Water temperatures range from 56° during the winter months to over 70° in the summer. Winds rarely exceed 15 knots and average less than 5 knots. Lightening is a rare event, occurring every few years at the beach. San Diego receives an average of 10 inches of rain a year over about 40 precipitation days.

GUIDES & STAFF

SCK hires all-around team members capable of performing all kayaking related duties. This is a key component to our safety strategy and exceptional safety record. Safety and guest satisfaction begin with initial customer contact either via website information, emails, or phone calls. Because our office staff is fully qualified to guide tours, they can accurately answer questions regarding the suitability of the tour, discuss risks, and set guest expectations. Because every team member plays a role in risk assessment and avoidance, we feel that it is critical to hire only team members over 18 years. The average age of our team is the highest among the concessionaires because we value the safety and judgement that experience brings. The law does not recognize a minor's ability to make decisions regarding their own safety and we believe that they have no place making safety decisions for others. In order to retain older, more experienced guides, SCK is committed to offering the highest wages of all the concessionaires.

STRUCTURE

Senior Guides: SCK has 3 Senior Guides, each with decades worth of outdoor leadership experience that makes them uniquely qualified to train and oversee the development and quality of our seasonal guides. Please see their qualifications (RFP Section 8, "Employees' Qualifications")

Primary/Lead Guides: Primary Guides can lead tours with no more than 5 guest kayaks on their own. They can lead tours with up to 10 guest kayaks in conjunction with a Senior Guide, another Primary Guide, or an Assistant Guide.

Assistant Guides: Must operate in conjunction with either a Senior Guide or a Primary Guide.

Office staff: Are required to act as Assistant Guide on a minimum of 10 tours and demonstrate outdoor leadership and risk assessment experience, along with exceptional guest service skills.

PARTICIPANTS

SCK strives to be inclusive to all people, within the confines of what is reasonable for safety reasons. In accordance with the Americans with Disabilities Act, we have established the following Essential Eligibility Criteria which are posted on our website and are applied to every potential participant.

Each TOUR participant must:

- Be at least 6 years old (Minors must be accompanied by an adult; minors under 12 must kayak tandem)
- Not exceed the weight limits of the kayak (450 lbs for solo or combined tandem weight)
- Breathe independently (i.e., not require medical devices to sustain breathing)
- Independently maintain sealed airway passages while under water or awash in surf
- Independently hold torso, neck and head upright and balanced (with no more than 14" of lower back support and optional adaptive equipment to support the thighs) *in existing sea and surf conditions*
- Manage personal care independently, or with assistance of a companion
- Manage personal mobility independently, or with a reasonable amount of assistance
- Follow written/visual or spoken instructions and effectively communicate in writing or orally either independently or with assistance of a companion
- Be able to independently turn from face down to face up, and remain floating face up without panic while wearing a properly fitted PFD
- Get in/out of a kayak independently or with a reasonable amount of assistance
- Be able to independently get out and from under a capsized kayak
- Be able to re-enter the kayak following deep-water capsize with a reasonable amount of assistance from a trained guide
- Be able to maintain a safe body position while attempting skills, activities, and rescues, as well as have the ability to recognize and identify to others when such efforts would be unsafe given the participant's personal situation

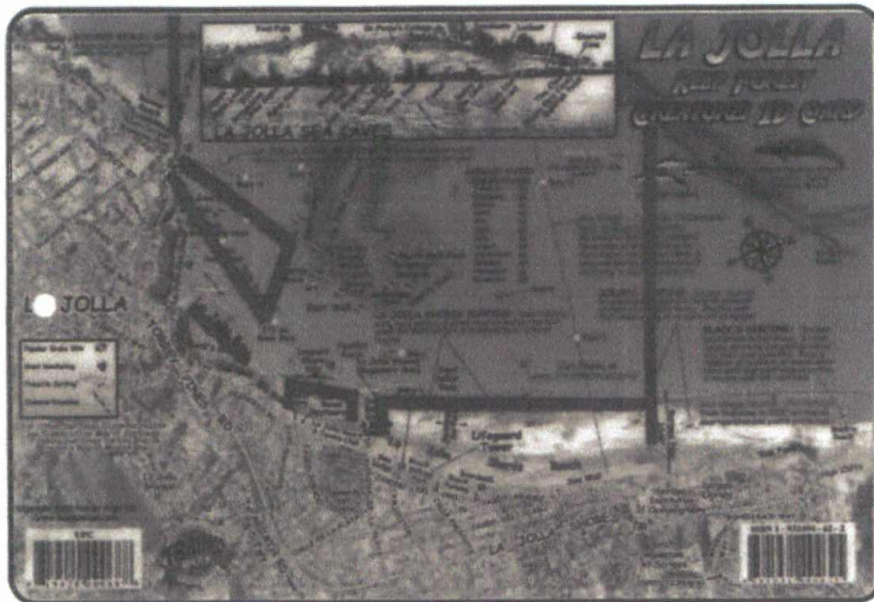
Each RENTAL participant must:

- Be at least 6 years old (Minors must be accompanied by an adult; minors under 14 must kayak tandem with an adult)
- Not exceed the weight limits of the kayak (450 lbs for solo or combined tandem weight)
- Breathe independently (i.e., not require medical devices to sustain breathing)
- Independently maintain sealed airway passages while under water or awash in surf
- Independently hold torso, neck and head upright and balanced with no more than 14" of lower back support and optional adaptive equipment to support the thighs *in existing sea and surf conditions*
- Manage personal care independently, or with assistance of a companion
- Manage personal mobility independently, or with a reasonable amount of assistance
- Follow written/visual or spoken instructions and effectively communicate in writing or orally either independently or with assistance of a companion
- Be able to independently turn from face down to face up, and remain floating face up without panic while wearing a properly fitted PFD
- Get in/out of a kayak independently or with a reasonable amount of assistance
- Be able to independently get out and from under a capsized kayak
- Be able to independently re-enter the kayak following deep-water capsize
- Maintain a safe body position while attempting skills, activities, and rescues, as well as have the ability to recognize and identify to others when such efforts would be unsafe given the participant's personal situation
- At least one person in each kayak must have the ability to propel the kayak through the water without assistance and in a stable manner *given existing surf and sea conditions*, recognize where they are at all times using visual landmarks and a map, and return to the launch site.

Participants range in age from 6 to 86. They represent a wide range of experience and fitness levels. Many have never kayaked before. Participants are asked to provide basic health information, especially concerning allergies, asthma, heart conditions, diabetes, and previous or current injuries so that guides may be prepared for issues that may develop. Some participants (obese, pregnant, hearing, vision, or mobility impaired, etc) may face additional risks which they need to be informed about, or for which we need additional control measures. Our Staff Manual (Attachment B) includes a thorough section on the adaptations we are able to make to accommodate a wide variety of disabilities (see "Guests with Disabilities" in Staff Manual). Guides, office staff, and managers must perform dynamic risk assessments for every tour that include the unique risks presented by the guests with suitable control measures put in place to reduce, to acceptable levels, either the probability of those risks occurring, the severity of the consequences, or both. We are uniquely equipped among concessionaires to accommodate the widest range of participants in the safest manner.

SUPERVISION OF PARTICIPANTS

Renters are instructed to stay within the area visible to the 2 lifeguard towers but are otherwise unsupervised. They are provided with maps and a briefing to show what hazards exist and how to avoid them.



La Jolla Sea Cave Kayaks: (858) 454-0111 if you need assistance

EMERGENCY: dial 911 and ask for the Lifeguards or raise your paddle(s) high in the air and wave it/them back and forth.

Kayak Renters agree to:

- Launch and land **ONLY** at Sea Cave Kayaks designated launch zone. Staff will assist you in launching. Please look for staff on the beach to direct you to land and land only when the zone is free from other water users.
- Avoid the areas outlined in red on the map
- Avoid breaking waves at all times except launching and landing
- **NEVER** enter the caves
- Yield right-of-way to swimmers and snorkelers
- Stay far enough away from marine mammals, birds, and other creatures to prevent altering their behavior. In particular, do not surround them or separate mothers and offspring
- Collect nothing from the La Jolla Marine Protected Area

Violations are subject to citations or fines by San Diego Lifeguards and immediate revocation of rental privileges

Guided tour participants are well supervised by guides following a ratio of one guide to every five guest kayaks. The group is always carefully managed and supervised by trained team members.

SIGNIFICANT RISKS

Significant risks are those which are both reasonably likely to occur and which may inflict serious damage to persons. The significant risk of this activity is high speed/high force collisions with hard objects caused by breaking waves. The risk is present at the launch/landing zone, other shoreline areas, and the sea caves. The risk is present not only for activity participants, but also other water users since a kayak being surfed by a wave will impact anything in its path with force. Given the abundance of breaking waves, activity participants, and other water users, this is the most probable and potentially damaging risk.

Properly trained kayakers can handle breaking waves with as much control as competent surfers, but such training is far beyond the scope of a 90-minute tour. The simple solution is to avoid breaking waves altogether and this is the strategy for most of the activity (renters are given maps showing areas to avoid and are forbidden to enter the caves, while tour guides use their experience and judgement to keep their group clear of breaking waves). However, avoiding this risk entirely is impossible during launching and landing. With multiple companies launching and landing tours simultaneously in a small space, plus private kayaks, the unmitigated risk of collisions is extremely high. We reduce the risk to acceptable levels by employing the following controls: guides and beach crew coordinate launching and landing all guests, ensuring that they are sufficiently spaced (in both space and time) to avoid collisions; guides and beach staff coach guests in strategies to maintain control in breaking waves (orientation and momentum); guides and beach crew maintain control over each kayak through the entire surf zone as necessary (large surf, extreme congestion, vulnerable guests (old, young, afraid, disabled, etc)).

NON-SIGNIFICANT RISKS

Other risks exist, but with proper controls in place (guide training, guest safety briefs, etc.), either the probability has been reduced very close to zero, or the consequences are minor, or both. These can be found in further detail in the Risk Assessment Chart.

GENERAL RISK ASSESSMENT CHART FOR LA JOLLA

This document, along with our Teams' ongoing Dynamic Risk Assessment, is what forms the basis of our Safety Briefings and Emergency Response Plan. Team members must continually conduct Dynamic Risk Assessments incorporating the following steps (as developed by Jennifer Kleck):

1. Identify the risk
2. Form a plan to avoid the risk
3. Form a plan of action in case avoidance fails
4. Inform participants of the risks and avoidance plans
5. Determine acceptability (see the following 'Probability vs Consequences' plot)

Discussion of Risk Assessment steps:

1. "Risk" includes injury to people, damage to equipment, or financial loss. Determine each risk as specifically as possible: HOW will someone get hurt, or a paddle be lost or broken?
2. How do we avoid that risk from happening? There are usually multiple ways. Some are obvious, others less so. The plan may be different for different circumstances or different guests. Think it through.
3. What if that risk happens? What will we do about it? If someone is injured can we call for help? If a paddle is broken can we tow the kayak to shore?
4. While we don't want to scare our guests away, it's important to have an honest conversation with them about the risks that they face. This isn't Disneyland and they can't accept a risk that they don't know exists. This is a CRITICAL role of all team members – informing guests about the inherent and specific risks of this activity.
5. Acceptability is determined by plotting probability against consequences. Most people will agree that a low probability/low consequence risk is acceptable while a high probability/high consequence risk is unacceptable. Anything in between is a personal determination. Some people think a 20% chance of dying on your way to summit Mount Everest is acceptable. Others think that a 1% chance of getting bruises and scrapes after a capsize in the sea caves is unacceptable. It's important that you let your guests make this determination. Inform them of about the consequences and probability and let them choose whether to accept the risks or not. The biggest difficulty here is that your determination of Probability and Consequences is a best guess based on your experience. NO ONE should enter the caves if there is even a small probability of getting badly hurt. However, on most days when guides deem the caves safe to enter, there is still some probability of capsizing and getting minor cuts and scrapes. While the actual probability is <1% on a "safe" day, if it happens to a guest, their perception is that the probability was much higher. It's better to overstate the probability and let guests decide. It should ALWAYS be stated that there is a risk of capsize and bumps, bruises, cuts, or scrapes when entering the caves and guests who don't want to accept the risk are free to avoid it altogether.

Risk	Plan to Avoid Risk	Plan if Avoidance Fails	Acceptability / Guide Discussion
Drowning	Water "confident", able to float face-up wearing a properly fitted PFD. Able to roll from face-down to face-up independently	Rescue skills, CPR (with shield), call 911	Low probability risk, but the probability goes up with people who can't swim. Pay attention to guests who tell you they can't swim or who express fear of capsize
Aspiration	Same controls for drowning. This is most likely to occur when guests panic, or are horsing around.	Rapid identification of breathing problem. Call 911 (ask for Lifeguards), rescue breathing as needed.	
High speed collisions in surf zone	Assist launching & landing guests. Space guests out (in both time and space). Time for lulls. Maintain control of the kayak through the entire surf zone for vulnerable guests (old, young, scared, infirm, etc)	First aid as needed. Stabilize, immobilize, & call for lifeguards if necessary. Call 911 (and ask for lifeguards) if hit to (or pain in) head, face, neck, or spine, or if in ANY doubt about the severity of the hit.	This is a serious, high probability, high consequence risk. Life-threatening injuries can occur if avoidance measures aren't taken.

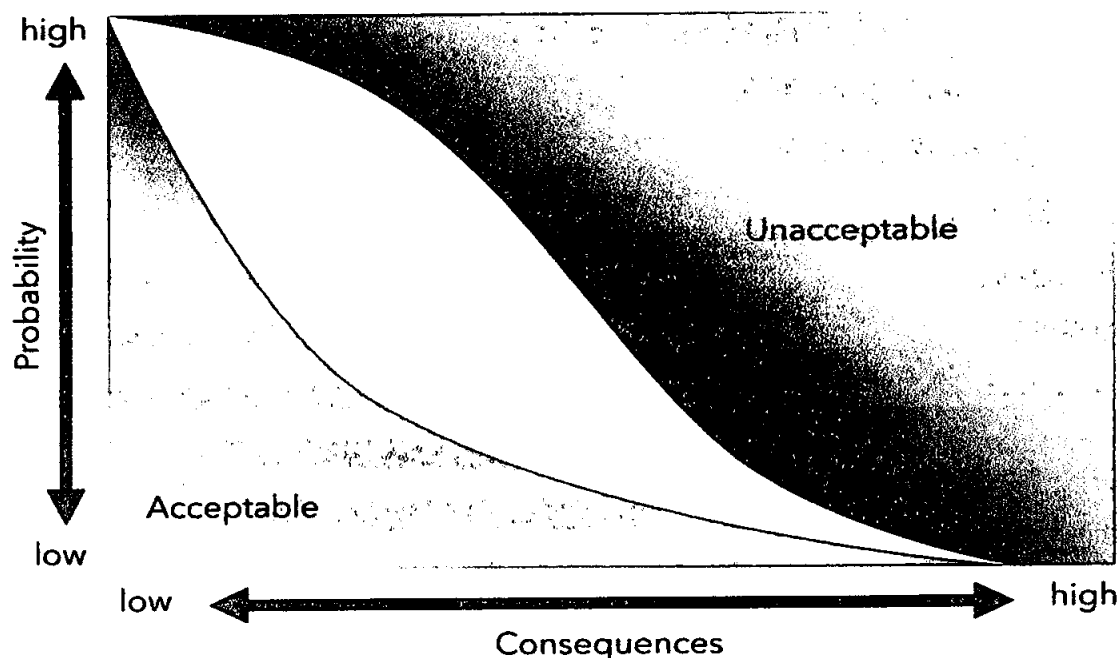
(table continues)

Risk	Plan to Avoid Risk	Plan if Avoidance Fails	Acceptability / Guide Discussion
High speed collision with rocks	Avoid all surf zones aside from launch/landing zone, especially at caves which may only be entered when no breaking waves are observed for 5 minutes and vertical rise and fall of water at cave entrance is <3'	Remove victim from danger zone only if it safe for the rescuer to do so. First aid as needed. Assess for injuries and administer first aid as needed. Call 911 (ask for lifeguards) if you are in ANY doubt about the injuries or if there is any pain involving face, head, neck, or spine	Only allow guests to enter the caves when you think there is a few % probability or less of MINOR injuries (scrapes and bruises). INFORM guests of possible consequences so they can opt out.
Hypothermia	Check forecast/water temp. and dress appropriately. Provide complimentary wetsuit for anyone who doesn't have sufficient clothing for the conditions and is unwilling to rent one. On cold days, guide carries a spare jacket or garbage bag.	Return to shop when first signs appear (shivering, blue lips, "umbles"). Get to shop and dry clothes.	Higher probability risk for guides (who may be wet for hours). Given our moderate climate and water temp, low probability on a 90 minute tour. Monitor fellow team members for failing judgement.
Heat Stress	Hydration, don't overexert, and keep cool by splashing water or swimming.	Signs of serious heat stress = fainting/dizzy, altered mental status, rapid, weak pulse. Call 911 (ask for lifeguards). Splash with water but do not float as they may not be able to protect their airway	Given our climate, and the cool water, heat stress should never reach serious consequences when identified early.
Sea Sickness	Inform guests in advance. OTC meds for guests who are prone. Look at shore, hydration	Float next to kayak for relief? Ginger chews? Tow, return to shore ASAP	High prob./low consequence.
Sting ray	Shuffle feet while wading	Hot water immersion for pain, first aid for cut. Seek lifeguard intervention	High prob. on this beach but easily avoided. INFORM!!
Cuts & scrapes	Wear shoes, don't walk in rocky areas, hands off cave walls, avoid breaking waves in caves and Devil's Slide	First aid as necessary (wearing gloves for personal protection)	Common result of a capsizel in the caves or Devil's Slide
Mental Trauma	Assess each participants comfort zone and keep the tour within those limits. Explain what is happening, inform guests of the risks and how to avoid them, establish trust and credibility.	Don't overlook seemingly inconsequential incidents. Check in with guests to be sure they are feeling ok. Then check in again and AGAIN. Inform the office team of any incident that might have been traumatic so the office team can follow up.	Seemingly minor incidents which don't result in physical injury can still have massive mental and emotional impacts. Check in with guest's emotional well-being and refer any suspect incident to the office team for follow-up
Blown offshore/unable to make landfall	Check weather forecast. NO GO = any local forecast over 20kts off-shore or observed over 15kts off-shore. No rentals if observed or forecast offshore winds over 10kts. Guided groups stay close to shore. Instruct renters to stay close to shore.	Keep guided group together with tow lines or seat backs. Call 911 (ask for lifeguards). For rentals, keep track of time departed, ETA, and location using binos. Call 911/lifeguards if in doubt.	Low prob. (esp. on guided tours) given San Diego's climate and proper attention to forecast. Consequences increase rapidly as prolonged search efforts lead to hypothermia
Lightning strikes	Check forecast. If thunderstorms in area, office staff monitors local radar continuously. Call tours for immediate return to shore if cells are nearby. NO GO if lightening/thunder until 45 minutes with no thunder.	CPR/Rescue breathing as necessary. Call 911 (ask for lifeguards)	Very low probability given San Diego's climate and proper attention to forecasts
Medical (asthma, allergies, heart attack, stroke, diabetes, etc)	Guides must check medical statements for indications of illness or injury that may increase the probability of an occurrence. Be sure guests have medications, inhalers, food, water, etc as needed.	First aid/treatment as needed. Outside assistance as needed.	Probability depends on the individuals. Check medical history for any indication of increased probability.
Infection/illness due to polluted water	Be conservative with water contact after rain events. Inform guests that those with immune deficiencies may be at greater risk. Offer rescheduling or refunds in order to protect vulnerable guests.	Disinfect/wash and seek medical advice as needed	Healthy individuals with minimal water contact = low prob. Vulnerable individuals (young, old, sick, immune deficient, etc.) = higher prob. INFORM. Offer refunds when risk is high.
Lost Renter	Give a thorough "Map Talk" orientation complete with rules and hazards in the shop along with a "Renter's Map" to take with them. Once on the beach, beach staff should point out major landmarks.	Keep a written record of Renter's name, kayak number, time out, renter's phone number and emergency contact number to aid in a search. See protocols in Emergency Response Plan	Beach staff can keep track of rentals by monitoring the operation area with binoculars.
Vehicular traffic collisions	Walk on sidewalks, stay well clear of truck lanes on the beach, especially at the beach entrance and lifeguard emergency lanes. Check for kids/people around company trucks on beach. PAY ATTENTION	Medical attention as needed. Call 911 (ask for lifeguards or ambulance depending on severity)	Very high consequences with low-moderate probability. This is a completely avoidable risk that we can't EVER allow to happen.

ACCEPTABILITY OF RISK

Carefully consider Probability and Consequences. These are not fixed and will change from one day (or hour) to the next, and one participant to the next. The skills we learn and the equipment we use, and carry are ways that we: **REDUCE EITHER THE PROBABILITY OF A RISK OCCURRING, ITS CONSEQUENCES, OR BOTH.** For example, when we shuffle our feet wading in shallow water, we reduce the probability of stepping on a sting ray to almost zero. Wearing a helmet reduces the consequences of a high-speed impact with a rock. For each risk you identify, how can you reduce the probability of it occurring? How can you reduce the consequences of it occurring? How do the abilities of each participant affect the probability?

Probability vs Consequences



Most people will agree that risks which have low consequences, but high probability (sting ray sting), are acceptable and so are risks with high consequences, but low probability (shark attack). Conversely, risks with high consequences and high probability or even moderate consequences with high probability are most likely to be deemed unacceptable. In the chart above, everything in the green area would fall in the "acceptable" category for most people; everything in the red area would fall into the "unacceptable" category for most people; and anything in between the colored areas represents the highly subjective nature of risk tolerance.

Emergency Response Plan

An emergency is any incident:

- Resulting in serious injury or fatality to a guest, employee, or member of the public
- Requiring rescue of a guest, employee, or member of the public from a hazard on the water or on land
- Involving a search for a guest or employee missing and believed to be in danger

STANDARDIZED TEAM RESPONSE

1. Ensure your own safety. (i.e. don't enter caves with big swell present to try to help someone. Wear gloves when blood is present. Use a shield when performing rescue breathing.)
2. Ensure the safety of the rest of the group/non-casualties. A second guide, or even a designated group member, must be put in charge so that the group remains together in a safe location. Delegate as needed.
3. Call for help. Call 911 (ask for the lifeguards), perform a May Day call on your VHF, have the entire group look towards the lifeguard tower and wave their paddles over their heads. Or do any combination of the above. Delegate as needed.
4. Remove victim from the danger zone IF and ONLY IF it is safe to do so. Otherwise, wait for lifeguards to arrive and preserve the safety of the group.
5. **INSERT the appropriate response for the specific emergency here (see below).**
6. Reassure the group, especially family and friends of the casualty, and keep them as informed as possible. "The San Diego lifeguards are among the most highly trained in the world and they are handling the situation in the best possible way." "Everything that can be done, is being done right now."
7. Contact the manager and Jen Kleck as soon as possible after EMS have control of the situation.
8. Attend to the rest of the group and return them safely to the shop. Reassure the group that "The situation is in the hands of the most competent and skilled personnel possible."
9. WRITE a complete report as soon as you are able (within no more than 3 hours). You may be a witness in court many months later and asked to recall seemingly unimportant details. Report everything you can recall and submit report to the manager and Jen Kleck.
10. Honestly answer all questions posed by the lifeguards, police, medical staff, or other emergency personnel.
11. Media questions should be answered as follows: "We had an incident today which is currently being handled by extremely qualified personnel. I am unable to provide details at this time, but our office will be able to answer your questions as information becomes available." You may give them the name and number of the company, and "Jennifer Kleck" as a contact.

UNRESPONSIVE VICTIM (TRAUMA)

1. Standardized Team Response steps 1-4 (above)
2. Check for breathing, protect airway. If patient is not breathing, rescue breathe at a rate of 2 breaths per minute. Check for pulse for 10 seconds. If no pulse is detected, start chest compressions (100 per minute) if possible, on shore or the deck of a kayak. Continue CPR until EMS arrives.
3. Check for severe bleeding and apply well-aimed direct pressure if needed. Continue until EMS arrives.
4. Stabilize head, neck, and spine to the extent possible and reasonable. Continue until EMS arrives.
5. Standardized Team Response steps 6-11 (above)

UNRESPONSIVE VICTIM (MEDICAL)

1. Standardized Team Response steps 1-4 (above)
2. Check for breathing. If the patient is not breathing, start chest compressions on the deck of a kayak (or shore if you're with yards of it) at a rate of 100 per minute. Continue until EMS arrives.
3. Standardized Team Response steps 6-11 (above)

UNRESPONSIVE VICTIM (DROWNING)

1. Standardized Team Response steps 1-4 (above)
2. Give 2 rescue breaths immediately (while still in the water). Get victim to shore if you are within yards of it, otherwise onto a kayak. Begin chest compressions at a rate of 100 per minute and continue rescue breaths at a ratio of 30:2 (chest compressions:breaths). Continue until EMS arrives.
3. Standardized Team Response steps 6-11 (above)

RESPONSIVE VICTIM – POSSIBLE MEDICAL EMERGENCY

The following signs of potentially serious medical emergency should prompt you to call 911 (ask for lifeguards) and summon a boat or jet ski for possible medical intervention. You don't need to diagnose the problem; you just need to recognize the symptoms and call for lifeguard support. Knowing the pertinent medical history from guest waivers will alert you to an increased probability that these symptoms will occur (guests with diabetes, asthma, allergies, heart conditions, etc. are more likely to exhibit such symptoms). Guests are likely to be reluctant to draw attention to themselves, so reassure them with statements like: "It's no big deal. The lifeguards love an excuse to get on their jet skis. I'm sure it's nothing too, but there's no reason to take a chance." Etc.

- chest pain
- changes in mental status
(confusion, slurred speech, unusual behavior, "out of it")
- difficulty breathing or shortness of breath
- fainting
- sudden dizziness, weakness, or changes in vision
- sudden severe pain anywhere
- hives, swelling, sudden changes in skin appearance

HIGH SPEED IMPACTS WITH HARD OBJECTS (conscious victim)

1. Standardized Team Response steps 1-4 (above)
2. Stabilize head, neck, spine to the extent possible and practical.
3. Check for severe bleeding and apply well-aimed direct pressure if needed.
Continue until EMS arrives.
4. Standardized Team Response steps 6-11 (above)

UNABLE TO RETURN TO SHORE

(ie: high winds, large swell, ill group member)

1. Standardized Team Response steps 1-4 (above)
2. Connect kayaks by use of tow lines and seat backs. Keep group together until lifeguards arrive.
3. Standardized Team Response steps 6-11 (above)

MISSING RENTER

1. Standardized Team Response steps 1-4 (above)
2. Check for assigned kayak(s) in boat launch area and surrounding beach areas.
3. Call any guides on tour and ask them to scan the area – especially Devil's Slide area.
4. Notify lifeguards: give names of missing guests, assigned kayak number(s), time signed out and time expected back. Ask to be updated every 20 minutes.
5. Notify all Team members on duty.
6. Call emergency contact provided on waiver. Inform them of the situation, reassure them, tell them what steps are being taken to locate the missing person and ask if they have any information that may help (medical conditions or mental state conditions that they may know about, etc.).
7. Contact lifeguards and family members the second the person(s) is/are located.
8. Standardized Team Response steps 6-11 (above)

ADMINISTRATIVE RESPONSE

Our guiding principle in emergency response is to show compassion to the victims and family members in concrete ways (phone calls, visits, rides to the hospital, hotel reservations, etc.) and to be communicative and honest regarding the events and our role in them. Repeatedly, it has been shown that victims and survivors want compassion and answers above all else. We do not put lawyers between us and our guests, but rather use experts and lawyers to guide us. Recommended reading: "Lessons Learned II: Using Case Studies and History to Improve Safety Educations" by Deb Ajango.

- If family members are present, coordinate communication between EMS and them. Keep them informed of casualty's location and events.
- If family members are not present, use the waiver to make contact and inform them of events and casualty's location, etc.
- Maintain lines of communication between family, EMS/medical facilities, and lifeguards as necessary and follow up as often as necessary.
- Contact List: Contact (in this order) one or more of the following people ASAP
 1. Jennifer Kleck – (Managing Member) (619)992-6693
 2. Josh Jackson – (Local Emergency Response Expert) (619)886-6335
 3. Shan Sethna – (General Manager/Risk Expert) (303)588-6501
 4. Todd Kobernick – (Lawyer) (619) 243-8680
 5. Marlie Hooper – (General Manager) (858)210-8630
 6. Lance Peto – (Managing Member) (619)770-0359
- Collect all data including Incident Report Form and debrief team members present. Take detailed notes regarding the days conditions, the victim(s), guides actions and events, what was said and by whom, EMS response, etc. No detail is too small to note down.
- Create an Incident File that includes the Incident Report Form and copies of the waivers of any guests involved. Add to this file as new information arises.
- Contact our insurance company (the same day, if possible).
- Write a press release to address any media involvement (the same day, if possible).
- File a copy of the Incident Report Form with the lifeguards.
- Debrief all team members regarding the incident.
- Review Risk Assessments and Incident/Emergency Response Plans and modify as necessary. Include any team re-training sessions as needed.

Incident Response Plan

An incident is any potentially traumatic event that is not an emergency. Even a simple capsized should be considered an incident if the guest(s) are distressed by it. Certainly, any event that draws blood or causes bruising should be considered an incident.

TEAM RESPONSE

We operate in an urban environment with well-trained medical and life saving personnel close at hand. In ANY incident where you feel uncertain regarding the severity of the situation, or in your ability to improve the situation, call for lifeguard support. Always err on the side of caution and recommend that an injured guest seek follow-up care with their doctor.

For any incident that is not an emergency, follow these steps:

1. Administer care as needed and within your training (clean and dress minor wounds, etc.)
2. Express concern for the guest's well-being and regret for the incident. Never minimize an injury or incident. What seems minor and insignificant to you may have lasting mental or emotional impacts! There does not have to be blood or bruises for there to be trauma. The attention and care you show now may determine whether a lawsuit is filed. Always offer to have the lifeguards evaluate an injury – especially soft-tissue injuries like pulled muscles, etc.
3. Notify the Manager or Jennifer Kleck ASAP
4. Complete an Incident Report Form the SAME day as the incident. Include as many details as possible including what was said and by whom. You may be asked to recall details months later, so record everything including details that seem unimportant or obvious. It's important that Jennifer Kleck reads the completed Incident Report as soon as possible to ensure thoroughness and so that Risk Assessments and Incident/Emergency Response Plans can be reviewed and modified as needed.

ADMINISTRATIVE RESPONSE

1. Contact family members if necessary
2. Collect all data including Incident Report Form and debrief all team members involved in the incident. Take any additional notes.
3. Create an Incident File that contains the Incident Report Form, waivers of the guests involved, and any other relevant notes or information. If medical care was rendered or recommended (beyond band aids), submit a copy of the file to the Lifeguards.
4. Review Risk Assessments and Incident Response Plans and modify as necessary. Include team re-training sessions as needed.
5. Follow up with casualty(ies) as warranted.

12. Equipment Provided

- 1 4x4 pickup truck, currently a Ford F350, to transport kayaks to and from the Site.
- 22 tandem kayaks
- 6 single kayaks
- 55 seat backs
- 55 paddles
- 60 PFDs (lifejackets)
- 60 helmets
- 30 wetsuits
- Adaptive paddling equipment:
 - Quick-release wrist bands that allow paddlers with poor (or zero) grip strength to participate
 - Paddle “T” clamp that allows people with only one functional arm to kayak
 - Stump sockets that adjust to accommodate lower limb amputations and provide torso and balance support
 - Laminated “Tour Content” cards for people who are hard of hearing or deaf
 - Specialized seat with a 14” back support and a raised edge under thighs to produce more “dump” and help people sit upright
- Miscellaneous: paddle rack, repair kit, first aid kits, tow ropes, beach chairs, staff sunshade, cell phones, etc.

CIVIL DIVISION
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CITY OF LA JOLLA