

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"), LA JOLLA KAYAK & COMPANY, 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 twelve thousand two hundred and forty-five dollars and six cents (\$12,245.06), which is one thousand and twenty dollars and forty-two cents (\$1,020.42) 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 or 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 Kayak & Company, LLC
Attn. Sharon Luscomb
2199 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

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

LA JOLLA KAYAK & COMPANY, LLC, a
California limited liability company

By: Sharon L. Luscomb 3/16/20
Name: Sharon L. Luscomb
Title: Co-owner / member

LA JOLLA KAYAK & COMPANY, LLC, a
California limited liability company

By: [Signature]
Name: Michael Luscomb
Title: Co-owner / member

THE CITY OF SAN DIEGO, a California municipal
corporation

By: [Signature]
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: 4/13/2020

BY: [Signature]
Name: Tom Tomlinson
Planning Department

Approved as to form this

24th Day of April, 2020

MARA W. ELLIOTT, City Attorney

BY: [Signature]
Name: Kathy J. Steinman
Title: Deputy City Attorney

EXHIBIT A
Site Map

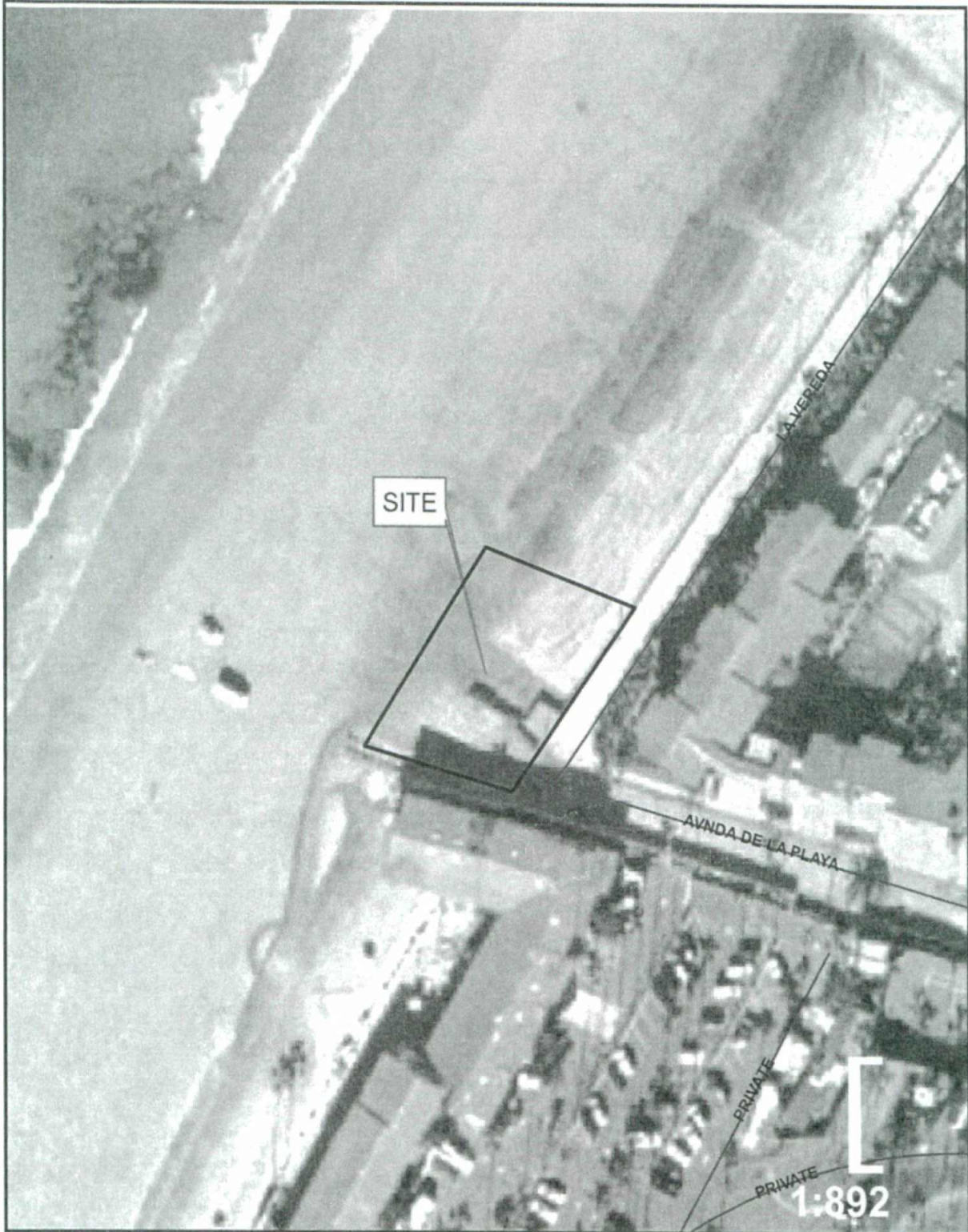


EXHIBIT B-1
Primary Kayak Tour Schedule

	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.

La Jolla Kayak

LA JOLLA KAYAK PROPOSED OPERATING PLAN

La Jolla Kayak's proposed operating plan is for the period April 1, 2020 through March 31, 2021. The details of the operating plan are shown for both the "peak season" timeframe, which is March 15, 2020 through September 30, 2020 as specified in the RFP, and the off-season timeframe. La Jolla Kayak is currently a highly qualified kayak operator, operating successfully under its current and previous Kayak Concession agreements with the City of San Diego for the La Jolla Shores area. La Jolla Kayak respectfully submits its proposal for operations within the guidelines of the current RFP and looks forward to partnering with the City of San Diego for its 3rd kayak concession permit. La Jolla Kayak's priority is for its operations to achieve the goals of the City's RFP efficiently, safely and effectively with minimal impact to the local community.

Request for Tours and Options

La Jolla Kayak is requesting 14 primary tour slots and Option A for use of 12 kayak rentals during the peak season. We believe our proposed request and operating plan are reasonable and supported by our historical operations and successful execution of the previous kayak concession permits with the City of San Diego. This request is the same amount of allotted tours and rentals that La Jolla Kayak currently has and was awarded during the previous RFP process as the #2 ranked vendor. La Jolla Kayak's request for 14 primary tour slots and 12 kayak rentals is essential to our company's continued viability. We are committed to executing this plan with exceptional safety in all areas specifically in the water and the boat launch while serving our customers and meeting the needs of the local community and businesses. We are also committed to providing an efficient and safe operation with a minimal impact on the surrounding neighborhood. We have shown this commitment in our current and previous agreements with the City of San Diego and have had excellent feedback from the Lifeguards during our peak season calibration meetings along with good relations with our surrounding neighbors.

Reasonableness of Proposal

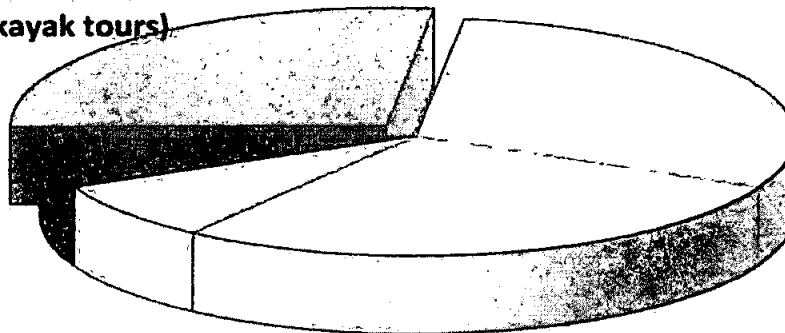
La Jolla Kayak is requesting 14 primary kayak tour slots and Option A in the RFP which allows for the use of 12 kayak rentals. Based on La Jolla Kayak's historical operations, the combination of this request for tours and rentals is reasonable and supports La Jolla Kayak's current operations. We believe that continuing our operations with 14 primary tour slots and potentially the same schedule as the previous seasons is a fair and reasonable request. La Jolla Kayak has been the #2 ranked kayak operator in the last 2 RFP processes for the kayak concession agreements. La Jolla Kayak is requesting the same primary tour schedule that it currently has for its requested 14 tours. This schedule has significantly increased

La Jolla Kayak

efficiency on the boat launch and reduced truck deliveries as well. We have successfully executed the past 5-year kayak concession agreement (2015-2019) with 14 kayak tours and 12 kayak rentals during the peak season (March 15-Sept 30). During this contract period (April 2015-Oct 2019) La Jolla Kayak has paid the City of San Diego fees of \$825,267 based on La Jolla Kayak's "Gross Revenues" per the agreement of \$8,252,670. (See "Operating Plan Financials 4H" of this proposal for details on historical revenues and fees). La Jolla Kayak's kayak tour business is approximately 27% of the kayak tour market share in La Jolla Shores. This has been consistently demonstrated with our successful operation in the past two kayak concession agreements based not only on City Fees paid (See "Operating Plan Section 4 Chapters A-L" of this proposal and the chart shown below) but also an excellent safety record along with strong community efforts and support. In addition, La Jolla Kayak operates its business in an efficient, safe manner with minimal impact or issue to the neighboring community. We believe it is reasonable for La Jolla Kayak to request fourteen (14) of the allotted fifty-four (54) primary peak season tour times. La Jolla Kayak is committed to operating this plan with the focus on safety and efficiency while minimizing the impact on the local neighborhood.

La Jolla Shores Kayak Tour Market Share by Vendor

LJK-27% market share
(kayak tours)



- ☐ La Jolla Kayak
- ☐ SD Bike & Kayak
- ☐ Everyday CA
- ☐ Sea Caves Kayak
- ☐ Hike Bike Kayak

*Figures are estimated based on City Fees Paid April 2015-October 2019

Primary Tour Schedule and Efficiency

The proposed tour schedules per the City's RFP reflect a system where boats from previous tours are "recycled" for tours later in the day. These schedules are the same schedules we have utilized during each peak season of our current five (5) year concession agreement. We have selected a primary tour schedule that represents a 100-minute recycle time between tours, a 90-minute tour and 10 minutes to recycle to next group. La Jolla Kayak's proposed tour schedule continues to ensure less and more efficient truck deliveries which is consistent with our current operations under this exact schedule. Our proposed tour schedule will also continue to support and improve efficient customer flow of traffic and continue to improve efficiencies to the Boat Launch operations and La Jolla Kayak's overall operations as well. La Jolla Kayak's aligned goal with the City's RFP is to minimize truck traffic and congestion on the launch while being able to send out extremely safe tours with the required amount of equipment. La Jolla Kayak's proposed schedule continues to minimize truck traffic, customer flow and overall operations.

La Jolla Kayak's tour schedule recycling 90 minute tours allowing for 10-minutes to recycle will help reduce any schedule and back-up in storage of kayaks on the beach for an unnecessary amount of time. The idea is that when one tour lands, another tour is already on the beach having finished paddle instruction and waiting on the returning boats to launch. This turnaround time not only nearly eliminates the possibility of going over the allotted amount of boats per schedule C, but it cuts down truck traffic as mentioned above. Running timely tours and an efficient launch process following the schedules and turnaround time is required in order to alleviate the bottleneck at the launch. These proposed tour times provide ample time for each tour to recycle without impeding other's use of the launch and helping to reduce customer congestion and traffic.

See "Operating Plan 4.A.i-Exhibit B-1" in this proposal for La Jolla Kayak's requested Primary Tour schedule as shown on the City's official schedule. See "Operating Plan 4.B.i- Exhibit B-2" in this proposal for La Jolla Kayak's Secondary Tour request which is Option A to utilize 12 kayak rentals and no Secondary Tour slots.

Number of Participants Per Tour/Ratios (both Peak and "Off-Peak" Seasons)

The maximum ratio of tour participants is five (5) client kayaks to one (1) tour guide. The five (5) client kayaks cannot exceed a total of ten (10) people.

Primary Tour Schedule Peak Season

(Represents RFP "Kayak Tour Plan;" estimated kayak tour times per schedule in RFP Exhibit B-1)

Time	# of Kayaks	Recycle Plan
9:00 AM	12 (10 client; 2 guide)	Truck Drop #1
9:40 AM	12 (10 client; 2 guide)	Truck Drop #2
10:00AM	12 (10 client; 2 guide)	Truck Drop #3
11:00AM	12 (10 client; 2 guide)	Recycled from 9:00 AM
11:40AM	12 (10 client; 2 guide)	Recycled from 9:40 AM
12:00PM	12 (10 client; 2 guide)	Recycled from 10:00 AM
1:00PM	12 (10 client; 2 guide)	Recycled from 11:00 AM
1:40PM	12 (10 client; 2 guide)	Recycled from 11:40 AM
2:00PM	12 (10 client; 2 guide)	Recycled from 12:00 PM
3:00PM	12 (10 client; 2 guide)	Recycled from 1:00 PM
3:40PM	12 (10 client; 2 guide)	Recycled from 1:40 PM
4:00PM	12 (10 client; 2 guide)	Recycled from 2:00 PM
5:00PM	12 (10 client; 2 guide)	Recycled from 3:00 PM
5:20PM	12 (10 client; 2 guide)	Recycled from 3:40 PM

Primary Tour Schedule Potential Truck Deliveries

Time	Round Trips	Details of Truck Trips
8:00 AM	3	24 kayaks/1 paddle rack
9:00 AM	2	12 kayaks
10:00 AM	2	18 kayaks
11:00 AM	0-1	See *footnote page 8
12:00 PM	0-1	See *footnote page 8
1:00 PM	0-1	See *footnote page 8
2:00 PM	0-1	See *footnote page 8
3:00 PM	0-1	See *footnote page 8
4:00 PM	0-1	See *footnote page 8
5:00 PM	0-1	See *footnote page 8
6:00 PM	2	Pick up 4:00 PM tour kayaks/rentals
7:00 PM	2	Pick up final kayaks and paddle rack, etc.

Footnote from Truck Deliveries chart: No scheduled truck deliveries are planned at these times given this tour schedule. The Beach Duty manager is in constant communication with the kayak shop via UHF/VHS radio in the event that any additional unexpected truck pick-ups or deliveries are needed to clear the launch. Boat counts and deliveries can change slightly due to clients requesting single vs. double (tandem) kayaks

Tour Schedule-Off-Peak Season (assuming all tour guides have five (5) client kayaks)

Off-season in the current RFP is October 1st, 2020 through March 14th, 2021.

The Original Kayak Tour: 90 minutes (1.5 hours) Kayak & Snorkel Tour: 90 minutes 1.5 hours)

Time	# of Tour Guides
9:00 AM	1-3 tour guides
10:00 AM	1-3 tour guides
11:00AM	1-4 tour guides
1:00PM	1-4 tour guides
2:00pm	1-4 tour guides
3:00PM	1-4 tour guides
4:00pm	1-4 tour guides
Sunset*	0-2 tour guides

Time	# of Tour Guides
11:30 AM	1-3 tour guides
1:30 PM	1-3 tour guides

*Sunset tour time varies-based on Pacific Central Time daylight savings period

** Kayak & Snorkel Tours are seasonal and offered from March-October and are dependent upon the ocean conditions for snorkeling. These conditions are known to vary

Whale Watching Tour: 150 minutes (2.5 hours)
(Available December 15 to February 15)

Time	# of Tour Guides
10:00 AM	1-2 tour guides
12:30PM	1-2 tour guides

Overview of Key Material Covered during La Jolla Kayak's Tours

At La Jolla Kayak, our trained tour guides teach clients the basics of kayaking techniques, while leading an interactive, educational and safe tour of the La Jolla Ecological Reserve. The following is a brief summary of material covered on every kayak tour:

- ✓ Proper kayak techniques including forward strokes, back strokes, turning and stopping
- ✓ Design and function of our kayaks
- ✓ Safety topics including surf awareness, awareness of swimmers and that they have the right of way, marine life hazards and kayak paddle signals for help
- ✓ History of La Jolla and the La Jolla Ecological Reserve
- ✓ Marine animals including leopard sharks, guitar fish, garibaldi, cormorants, sea lions, harbor seals, dolphins, brown pelicans, green turtles and sand dollar beds
- ✓ Marine flora including giant kelp, eel grass and boa kelp
- ✓ Geological formation and history of the La Jolla Caves
- ✓ Conservation and environmental awareness

Sample Kayak Tour Overview

Kayak Tour Route and Desired Stops

La Jolla Kayak puts you, as the tour guide in the captain's chair when it comes to the tour route. Conditions change constantly and based on the proximity of other companies' groups launching simultaneously it may be a good call to save some of the regular stops for the way back. Getting into the cave can be VERY crowded and if you trail behind one or two other major groups you are going to have to wait a while to get in the Clam Cave (see etiquette section for details). It is completely acceptable to skip a few stops along the way in order to get to the cave and make the whole process more efficient for all companies involved. It is important however that based on time you do make the required info stops on the way back. The following is an outline of the stops expected on Our Original La Jolla Kayak Cave Tour.

It should be noted that La Jolla Kayak's tour customers are informed up front that entering the caves is never guaranteed. It is entirely dependent upon safe conditions and at the discretion of our trained kayak tour guides. This allows flexibility and is required to keep the tour safe during changing ocean conditions. We require our staff to be very conservative with their decision.

Introduction and Marine Reserve Overview

- Make your introductions again, check on how everyone is doing and ask if anyone is from San Diego. At that point you can commence with an overview of the area.

Stop 1 (Off the Launch)

- Deep Water Submarine Canyons
- The La Jolla coast is somewhat unique in having two submarine canyons that extend virtually into the beach. One of these canyons is located off the cliffs north of Scripps Institution, and the other is off the south end of the long beach at La Jolla Shores. Both canyons are rather clearly related to the land valleys at their heads. The northern one, Scripps Canyon, extends southward in an almost straight line and has vertical, and even overhanging, walls all along its length for about a mile out, where it joins the less precipitous La Jolla Canyon. One unique feature of Scripps Canyon is its constantly changing depths. It fills gradually for a number of feet, and then a slide, sometimes combined with a turbidity current, carries the sediment seaward, often with enough force to remove large boulders along its course. It has several side canyons at its head and, from time to time, new or old buried tributaries are apparently uncovered, which may subsequently be refilled.
- La Jolla Canyon has steep sides and a vertical headwall but is generally less precipitous than Scripps Canyon. It extends for thirty-three miles seaward in a general southwest direction and enters San Diego Trough twenty-seven miles off the coast at a depth of 3,600 feet. Dives into the head of the canyon shows it to be unstable and the character of the bottom changes at frequent intervals of time. The surrounding terrace has yielded many artifacts, some dated at approximately 4,200 years old. There is substantial evidence that the head has been retreating shoreward at an average rate of about one inch per year for the past few thousand years. Shepard and Dill also showed that the retreat from 1950 to 1964 was over two feet per year. An interesting feature of La Jolla Canyon is the effect it has on the waves on the long beach at La Jolla Shores. The waves are almost always much smaller at the head of the canyon, owing to wave divergence as the crests move shoreward up the canyon. Conversely, they are much larger at the north end of the beach where the waves converge, so there may be two-foot breakers at the canyon head and ten-foot breakers in the northern convergence, half a mile up the beach. Thus, swimming is easier at the canyon head, and huge numbers of bathers' swim there every day in the summer, whereas surfers are relegated to the northern convergence, where they abound. The effects also relate to the rip currents, which are an ever-present danger. These rips are in the area between the lowest and highest waves, and the lifeguards are on constant alert for unwary bathers in this zone.
- Marine Reserve
- The Ecological Reserve was established in 1971 and has since been expanded to a total of 533 acres. It covers all of La Jolla Cove to a point midway on La Jolla Shores' beach. No fishing or scavenging is permitted within the reserve.

The Marine Life Refuge encompasses the Scripps Pier at Scripps Institution of Oceanography and was established back in 1929 as an academic research area. Recreation and fishing are permitted in the refuge.

Marine protected areas cover 5.9% of Earth's territorial seas and 0.5% of extraterritorial seas. The reserve clearly states no fish, or marine life can be taken out of the reserve. The protection also prohibits littering or building of anything that would interfere with this fragile environment.

Blacks Beach

Black's Beach is most infamously known as a nude beach, a practice that is no longer permitted in the southern portion managed by the City of San Diego. The northern portion still attracts some nude sunbathers; mostly older folks who tend to avoid the use of sunscreen. Black's Beach in San Diego is perhaps the largest nude beach in the United States and is popular with Southern Californian nudists and naturists. Because Black's Beach was traditionally recognized as a clothing optional beach, nudity is tolerated for the portion of the beach that is managed by the state park. Nudity has been prohibited on the city portion of Black's Beach since 1977. Prior to 1977 the city posted it as a "swimsuit optional" area. You don't want to go for the view; the surf however is worth the trip.

Offshore lays a submarine canyon, which funnels swells into Black's Beach, making it appealing to surfers but dangerous for inexperienced swimmers. Swells can reach upwards to about twenty (20) feet in the winter months with the right swell.

Black's Beach was named for the Black family who had a horse farm overlooking the beach. They sold the land, and then it was subdivided into La Jolla Farms lots. The Farm's residents retained the Black family's private road to the beach.

Stop 2 (Off Gazebo's)

Leopard Shark City

The Leopard Sharks found in the shallows in front of the Beach and tennis club are completely harmless docile creatures with tiny, smooth molar like teeth that cannot harm humans. They typically grow to lengths of around four (4) to five (5) feet with the biggest one on record being seven (7) feet long. Adult sharks have more "saddles" and spots with lighter centers than the juveniles do. Most sharks migrate when the water temperatures dip below 54 degrees Fahrenheit, always returning to their birthplace to breed. La Jolla Shores is a very popular birthing ground for these sharks. Hundreds of sharks congregate in the shallows in mid to late summer to give live birth to as much as many as 37 young after a gestation period of 10-12 months. Most sharks can be found in shallow waters and estuaries less than 13 feet deep. Although they have been seen as deep as 296 feet down. Their diet consists mostly of small crabs, clams, worms and boney fish and fish eggs.

The Marine Room

The Marine Room opened in May of 1941 and at the time offered Lobster for \$1.35 and Martinis for \$.35, now you can barely get a shrimp cocktail for \$20 dollars! The view from the dining room used to only protect diners with a series of single pane windows. These windows couldn't stand up to the huge surf however, and in 1982 during a vicious El Nino Storm, the surf found its way through, flooding the restaurant. For nearly nine months the restaurant was closed for renovation and reopened with very strong, durable windows able to withstand the force of the Pacific.

Cold Water Rocky Reef Habitat

The Cold-Water rocky reef extends from Gazebo's all the way along the southern coast of La Jolla. In fact, the only purely sandy bottom beach in La Jolla is the Shores. This habitat is home to an enormous variety of our smaller reef fish. The most notable of which is the California State Marine fish, the Garibaldi. Orange in color this little guy is a direct relation to the Clown fish, which was portrayed as Nemo in the "Finding Nemo" movie. This fish is completely harmless but if an unwanted visitor comes to close to a nest these fish are very territorial and will blow bubbles or swim circles around an intruder. The fish are terrible to eat which is fortunate that they are a state fish, protected by law. The male clears a sheltered nest site within his territory, and the female then deposits eggs within the nest. The male subsequently guards the nest until the eggs hatch after 19-21 days. During this time period, the male Garibaldi aggressively tries to keep all other fish away from the very edible eggs. Like all male damselfish, the male Garibaldi will boldly attack much larger swimming creatures, including humans, to the point of biting divers in order to try to drive them away from the area where the eggs are deposited. Adult fish are a rich orange in color, whereas juvenile fish are redder and have many small blue spots. Adults tend to have a opaquer tail and dorsal fin. Spiny Lobster, Calico Bass and even Leopard Sharks and Horn Sharks can be found in the cold-water rocky reef habitat.

Stop 3 (Devils Slide)

Devils Slide

- This area is beautiful but can be dangerous when surf is big, so make sure when you gather your group to stop, you are in an appropriate place that will allow for some drift with the current in towards shore without compromising your groups safety.
- Rose Canyon Fault
- The Rose Canyon Fault is a right-lateral Strike-Slip fault running in a north-south direction through San Diego. About 19 miles in length it starts in the Mission Valley area and heads, past Mt. Soledad and La Jolla, into the Pacific Ocean where it joins other faults, such as the Oceanside

Fault. Not much is known about this fault at present, though its slip-rate is thought to be 1.1 mm/yr. The Rose Canyon Fault has recently garnered more attention because it runs through such highly populated areas but is not thought to be much of a threat. Because of the combination of this fault and the porous sandstone bluffs of the La Jolla coast, homes along the edge of the bluff depending on their proximity to the edge are in extreme danger of falling into the sea. If homes fall off the cliff inside the reserve, they can receive fines of thousands of dollars for "littering" in a protected reserve.

Stop 4 (The Caves)

The Caves

- La Jolla's seven sea caves are found close together, from west to east they are named The Clam Cave, Sunny Jim Cave, Arch Cave, Sea Surprise, Shopping Cart, Little Sister, and White Lady. Lifeguards who frequently made rescues in the area and needed a way to identify the caves named most of the caves. Naturally these caves were created in part by the Rose canyon fault driving the bluff out of the water as well as 200,000 years of the surf pounding the cliff face, eventually carving out what caves we see today.

History of Sunny Jim Cave

Sunny Jim's Cave is one of the only sea caves accessible by land. It connects to the Cave Store, previously owned by Gustav Shultz. In 1902 he hired laborers using picks and shovels to dig a tunnel connecting the main house/shop with the sea cave itself. The project took over 2 years to carve the 145 steps out of the sandstone. If you are standing inside of the Cave Store looking out of the cave, it resembles a cartoon mascot for British Force Wheat Cereal from the 1920's. It was given the name "Sunny Jim" by Frank Baum, the author of The Wizard of Oz. The cave was once used to smuggle Chinese immigrants and contraband Alcohol during Prohibition. Because of the ease of access Hollywood has used the cave for several different movies.

Sea Lion Description

Sea Lions are most commonly found sitting atop the cliffs near the La Jolla Caves. Sea Lions are protected under the Marine Mammal Protection Act so approaching the sea lions on the cliffs is prohibited. Sea Lions are very friendly, however, and may swim around kayakers.

These playful creatures are incredible in their ability come under the classification as "super divers" because of their ability to hold their breath for 10 minutes and reaching depths of 500m (1,640ft). The ability to dive at such depths is credited to their anatomical ability to collapse their lungs while utilizing

oxygen stores in their muscles and blood. The mammals can come up for a quick breath and do the same feat in seconds.

Sea Lions have earflaps and long front flippers, which enable them to walk on land. Seals do not have this ability and slither around like a snake on land. Sea Lions also bark on land to communicate, while seals do not. Male sea Lions can reach 8 feet long and over 600 pounds while females top out at around 200 pounds. They are able to maintain such weights because they feed on enormous amounts of food, typically 5-8% of total body weight. The average life span of a mature sea lion is 20-30 years.



Dead Man's Jump

Dead Man's Cliff is about 107 feet tall with water depths of 8 to 15 feet depending on the tide. No daredevil put La Jolla on the map with greater panache than the death-defying Professor Horace Poole. Beginning in 1897, Poole made a 4th of July tradition of leaping into the sea from the cliffs above the cave and outdid himself in 1898 by bathing in oil and setting himself ablaze just before the dive. Poole survived to repeat his feat for several years, until a rival, Burt Reed, the son of former San Diego mayor D.C. Reed, died of injuries from duplicating the leap. This tragedy put paid to further cliff diving, but the redoubtable Poole forged on until 1920, when he dove into the sea off Ocean Beach from an airplane. Poole emerged unharmed, but the plane crashed and sank. An unlikely quiet death in bed claimed Poole in San Diego in 1943. The jumping was pioneered by since the wall of the cliff curves downward, you need to get a running start to clear the entire cliff. The water depth below is only 8 to 15 feet deep. After three teenagers jumped off the cliff and died between 1995 and 1996, jumping off of Dead Man's Cliff was banned.



The Clam "Swim Through" Cave

The Clam Cave is the only cave opening in La Jolla that is visible from the street along Coast Boulevard. It is double-sided, which is why it is named "the clam", since a clam has two sides. The Clam's unique shape allows kayakers to paddle through the cave's entrance during calm ocean conditions.



Other Things to Talk About During the Tour

Myths & Legends of La Jolla

La Jolla has amassed a treasure trove of local history; its natural beauty, elegant ease of life, and celebrated centers of learning and research have drawn so many ingenious artists, actors, scientists, and colorful characters to its secluded shores that the result could never be ordinary. And yet, much of La Jolla's unique charm is hidden from all but the diligent historical detective and the gregarious native with an ear for a tall tale — or a very short one. Like many coastal communities, La Jolla's sedate and sophisticated image hides a wild and woolly youth, when curious galas and colorful daredevils first distinguished the fledgling settlement. "We do have our eccentricities". Public spectacles such as the 1917 "Whale Barbecues" in Scripps Park brought new residents together over the carcasses of whales harpooned by local fishermen not far off the coast, while elaborate publicity stunts were staged to draw visitors to the newly developing La Jolla. An 1894 San Diego Union column details a typical event: "The managers of this favorite resort have prepared another performance for Sunday afternoon...in the shape of balloon ascension. Miss Hazel Keyes, with her trained monkey Yan Yan, accompanied by Professor Romeo, the accomplished aeronaut, will make the ascension and each will drop in different parachutes, making the perilous descent separately." As La Jolla matured and secured its reputation as a secluded retreat, it became home to celebrated creative titans from Raymond Chandler to Dr. Seuss, but long before the La Jolla Playhouse first showcased the town's world-class local talent in 1947, there was the Green Dragon Colony. The colorfully-christened group was founded by Miss Anna Held, a nanny to the children of President Ulysses S. Grant, who fell in love with La Jolla while squiring her charges along on the general's visit to San Diego for the grand opening of the downtown hotel named for him. Held bought adjoining lots around Goldfish Point and built 12 fanciful cottages with names like the Outlook, the Wigwam and Noah's Ark (which incorporated a boat into its structure "in anticipation of the prophesied flood or of an inrush of tourists," according to the Union).

The Green Dragon Colony

The Green Dragon Colony opened in 1894 as a hothouse for artists, novelists, composers, and other creative lights to spark off each other and the invigorating seaside solitude; and though the last traces of the colony were knocked down by 1949, some artifacts remain in odd places — a fireplace from one cottage found its way into the now defunct Chart House restaurant — and the Green Dragon's tradition of nurturing the fine arts continues to infuse the La Jolla character. Others among La Jolla's storied residents refuse to lie quietly and let history speak for them. The Grande Colonial Hotel La Jolla seems quite proud of the fact that some of its guests refuse to check out, ever.

An apartment hotel when it opened in 1913, the Grande Colonial once hosted two men and two women who enjoyed loud nightly drinking parties in a pair of ground-floor rooms. Though the rooms later became the hotel's bakery, the departed revelers have been heard partying on through the decades and have made their displeasure plain whenever renovations interrupted their merrymaking. During the construction of the hotel restaurant, Nine-Ten, chefs who left sauces simmering overnight found the pilot lights extinguished or turned to full blast, and employees have reported seeing pans and other utensils move on their own, as the rowdy foursome pause to prepare a snack.

A special hotel room with semi-private entrance was a favorite hideaway for such Hollywood luminaries as Gregory Peck and Mel Ferrer, and desk clerks chronically receive calls from the room — when it's vacant. Employees and guests from as far back as 1928 have described other ghostly guests such as a dapper tuxedoed gent and a lovely lady in a crème-colored evening gown, but the Grande Colonial graciously entertains its phantom freeloaders, and even promotes their hauntings as subtle testimonials to the hotel's charm.

Brockton Villa

Now a popular coastal eatery, this historic building was once home to a family who met a tragic end. Dr. Joseph Rodes built the Brockton Villa in 1894 for himself and his wife. Rodes was fishing off the point in 1896 during rough seas when his boat went down in a fatal accident in full view of his horrified wife from her porch. Rodes' widow sold the house and left La Jolla, but the spirit of the luckless mariner still haunts his broken home, now the Brockton Villa Restaurant.

Little Munchkins

- There isn't a La Jolla myth more persistent or more intriguing than the "tall" tales told of Munchkinland. I've never met a native San Diegan who did not hear this fantastical but oddly compelling story, and waste at least one high school Saturday night searching for it. For the transplants among you, the legend goes that a coalition of actors who portrayed the Munchkins

in *The Wizard Of Oz* in 1939 bought and built a secluded community somewhere on Mount Soledad, where they could live normal lives away from prying giants, in a neighborhood custom-built to fit their modest stature: tiny houses huddled around a little lane with short curbs and pygmy trees and streetlights you could touch with your hand. Embellished yarns told of the intensely private munchkins and their regular-sized offspring violently ejecting curiosity seekers, of secret entrances disguised as hedgerows, and even a series of four enchanted bridges. The truth behind this legend turns out to be so much more mundane, that one could hardly be blamed for siding with the lie. Indeed, there were once a handful of odd little cottages on Mount Soledad, and according to Olten, a bunch of Hollywood Munchkins did indeed stay in them for a time during the filming of *The Wizard of Oz*. While they came and went without incident, like so many other famous and fascinating visitors to La Jolla, the ripples of their passage still have tongues wagging.

- Designed by western architect Clifford May, the four fanciful cottages were set on a recessed lot on steep and winding Hillside Drive, so they seemed much smaller than they really were. Their low doors and drooping roofs, quaint cobblestone tile interiors, and Hobbit-sized round fireplaces proved fertile fodder for fairytale speculation, but the mythmaking could not spare them from the bulldozers of progress. Of the four, only one survived at 7477 Hillside Drive as of 2005 but has since been absorbed into another lot as a backyard playhouse. Another of the cottages was relocated onto the grounds of UCSD, where a plaque proclaims its dubious historical value, and keeps the legend of La Jolla's Munchkinland alive. A truly haunting locale, La Jolla captivated the dreams of America's most accomplished dreamers and wove a spell no visitor could escape. Having found a home as magical as anywhere over the rainbow, who could be persuaded, whether by the forces of life or death itself, to leave?

Exhibit B-1
Primary Kayak Tour Schedule

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

*Tour Time #53 was converted this past permit 2015-2019 to 17:20pm due to the daylight savings time issue-the 17:40 tour at 1 1/2 hours returns back to launch later than dusk which is later than allowed per the permit. Lifeguards approved the previous tour schedule.

Secondary Tour Schedule

La Jolla Kayak requests Option A-utilizing 12 kayak rentals and no secondary tours during the peak season timeframe, March 15th, 2020 through September 30th, 2020.

See "Operating Plan 4.B.i-Exhibit B-2" in this proposal for the Secondary Tour Schedule for Option A-utilizing 12 kayak rentals (Exhibit B-2 from the RFP).

Kayak Rentals - Peak Season

La Jolla Kayak proposes the selection of Option A which allows for twelve (12) individual kayak rentals and Zero (0) secondary launch times during the peak season. The earliest kayak rentals will be scheduled for 8:00 AM and the last rental will return to the beach at least fifteen (15) minutes prior to sunset. La Jolla Kayak will use beach duty staff to ensure the safety of these kayak renters, providing further instructions if needed and maintaining a safe launching and retrieval of the kayaks. Beach staff in the peak season is approximately four (4)-seven (7) employees. In addition, we have a Beach Safety Manager in the peak season. These employees are responsible for safe retrieval and launching of kayak rentals and tours, safe truck deliveries as well as overall safety on the launch. Kayak rentals like tours will also be recycled throughout the day and will require minimal truck deliveries. Boat numbers corresponding to each rental party will be kept by the beach staff for emergency purposes and tracking this will also be tied to the client's waiver. Beach Staff are in constant communication with the shop with UHF radios and I-pad electronic devices which are integrated with our internal Purchase Order System (POS) that shows the schedules, customer names, etc. Kayak rentals will be pre-scheduled for the majority of the peak season which will allow La Jolla Kayak to plan for its capacity and schedule accordingly thus minimizing extra truck deliveries and/or wait times for clients. Kayak Rentals will be sent out in ninety (90) minute increments and scheduled to recycle throughout the day.

Kayak Rentals Off-Season

Kayak Rentals in the off-season are scheduled and available to launch from 9:00 AM returning 15 minutes before sunset. Employees will ensure that kayaks are launched and retrieved safely as part of the Beach Duty requirements. Kayak Renters will be held to the same safety guidelines as the peak season. Staff is responsible to ensure that renters are well briefed before departure and have the opportunity for assistance at the boat launch for departure and return to ensure their safety. La Jolla Kayak is constantly checking the ocean conditions in the off-season since that can be a time of colder water and big surf.

Operational Safety and Mandatory Rules, Training for Kayak Renters

La Jolla Kayak has been operating for 25 years with the greatest priority being the safety of our clients and the public. Our highly-trained and qualified staff has assisted the San Diego City Lifeguards during multiple water rescues and continues to provide added surveillance on the water. They have also helped to rescue private kayakers, divers, swimmers and other company clients as well as clients from competing companies in need of assistance. At all times, they maintain a close watch on swimmers and boaters in the area to ensure the safety of all. La Jolla Kayak takes safety very seriously and makes it a number one priority. Kayak rental clients go through an extensive set of safety standards.

- La Jolla Kayak staff is trained to ask potential kayak renters about their kayaking and ocean swimming experience to ensure that kayak rental clients have adequate skills and experience needed for the kayak rental. It is strongly encouraged that kayak rental clients have been on one of La Jolla Kayak's tours prior to doing the rental.
- La Jolla Kayak advises all individual kayak renters not to venture near the rocks and not to enter the caves and that they are "off-limits".
- Kayak renters are also told to remain out of the swim lane at La Jolla Cove.
- Clients are given a specific review at the time of check-in at the shop of unsafe and restricted areas (per San Diego Municipal Code section 63.20.2 water activity zone areas) on a map by trained staff members (see "Operating Plan 4B.ii" in this proposal for a copy of the kayak rental safety map). A laminated version of this map is given to the client and can be attached to a strap on the kayak and highlights the following key points:
 - Stay out of the caves and stay a minimum of 50 feet away from any cliff face or exposed rock (will be adjusted to a greater amount depending on the conditions)
 - Stay out all of the swimming areas and lanes (including those at La Jolla Cove) as marked on the map and watch for swimmers, as they have the right of way at all times
 - Do not go further North or South of the Map's Boundaries
 - No kayak surfing allowed at La Jolla Shores
 - As a general rule, kayakers need to stay 200 feet off the beach
- La Jolla Kayak's kayak rental clients are also required to watch an instructional video which is shown in two staging areas of the store. (See "Operating Plan 4F.ii" in the proposal for Location pictures in this proposal to see the staging areas with the video's being displayed). This video details and reiterates the restricted areas and hazards that may be encountered while out on the water.
- La Jolla Kayak ensures that all kayak guides, kayak tours and individual kayak rentals are knowledgeable about and comply with the restrictions set forth in the Marine Mammal

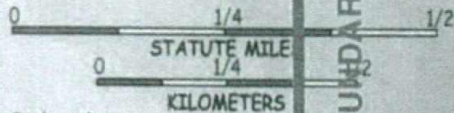
Protection Act of 1972 (MMPA), which prohibits the harassment of many mammal species including seals and sea lions.

- Waiver forms are required from each individual renter and tour participant or their legal guardian if under the age of 18 years old. Client information, such as name, address, age and phone number, is recorded to assist with emergency situations. (see "Operating Plan 4D section 9" in this proposal for a copy of the liability waivers).
- La Jolla Kayak's beach staff, located at the boat launch, assist in the launching and retrieval of kayaks as well as address any last-minute questions about the area and safety concerns. The beach crew constantly monitors the horizon with binoculars to ensure all clients are in the correct areas and out of harm's way.
- See Attachments at "Operating Plan 4B.iii" in this proposal for illustrations of safety protocol at La Jolla Kayak.

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	

SCALE



Foot Path

Dr. Poole's Cottage

Deadmans Lookout

Emerald Cove

LA JOLLA SEA CAVES

As viewed from between the Swim Buoys

Corrers
White Lady
Breakdown
False Cave
Shopping Cart
Big Breakdown
Sea Surprise
Arch Cave
Tunnel
Sunny Jim Cave
Sea Lion Haul-out
The Clam (Swim-Thru)
Goldfish Point

KAYAKS MUST STAY OUT OF RED ZONES AND SEA CAVES



Migrating Gray Whale
North in Spring
South in Winter

AVERAGE WATER TEMPERATURES

January	58
February	57
March	56
April	60
May	63
June	65
July	66
August	68
September	66
October	65
November	62
December	59

Scripps Canyon

Common Dolphin

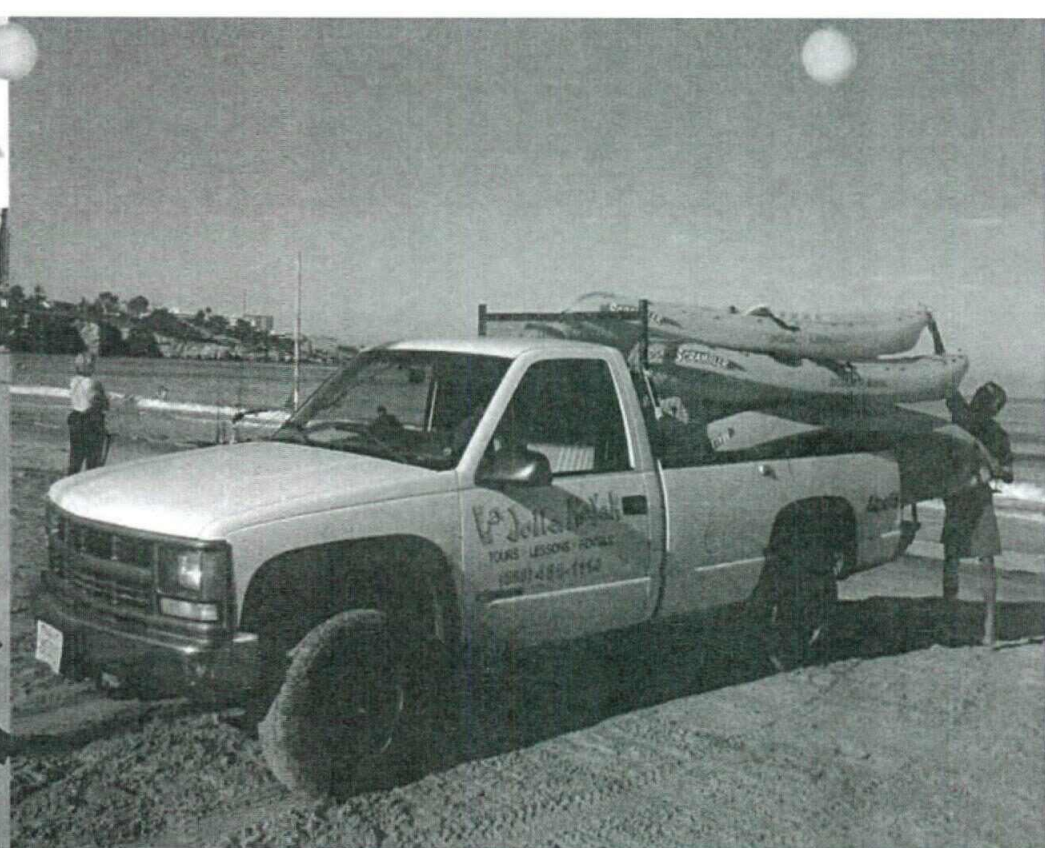
San Diego Marine Life Refuge

Tide Pools
Black's Beach
High Cliffs

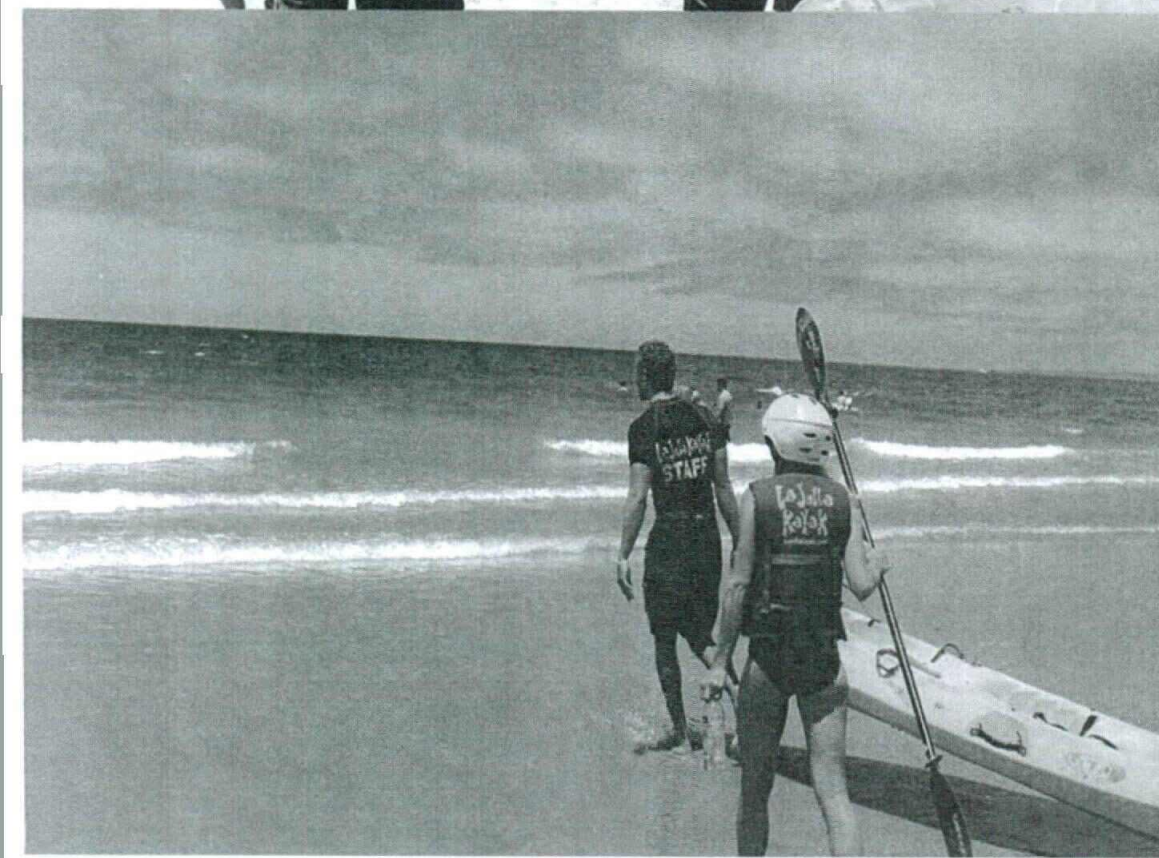
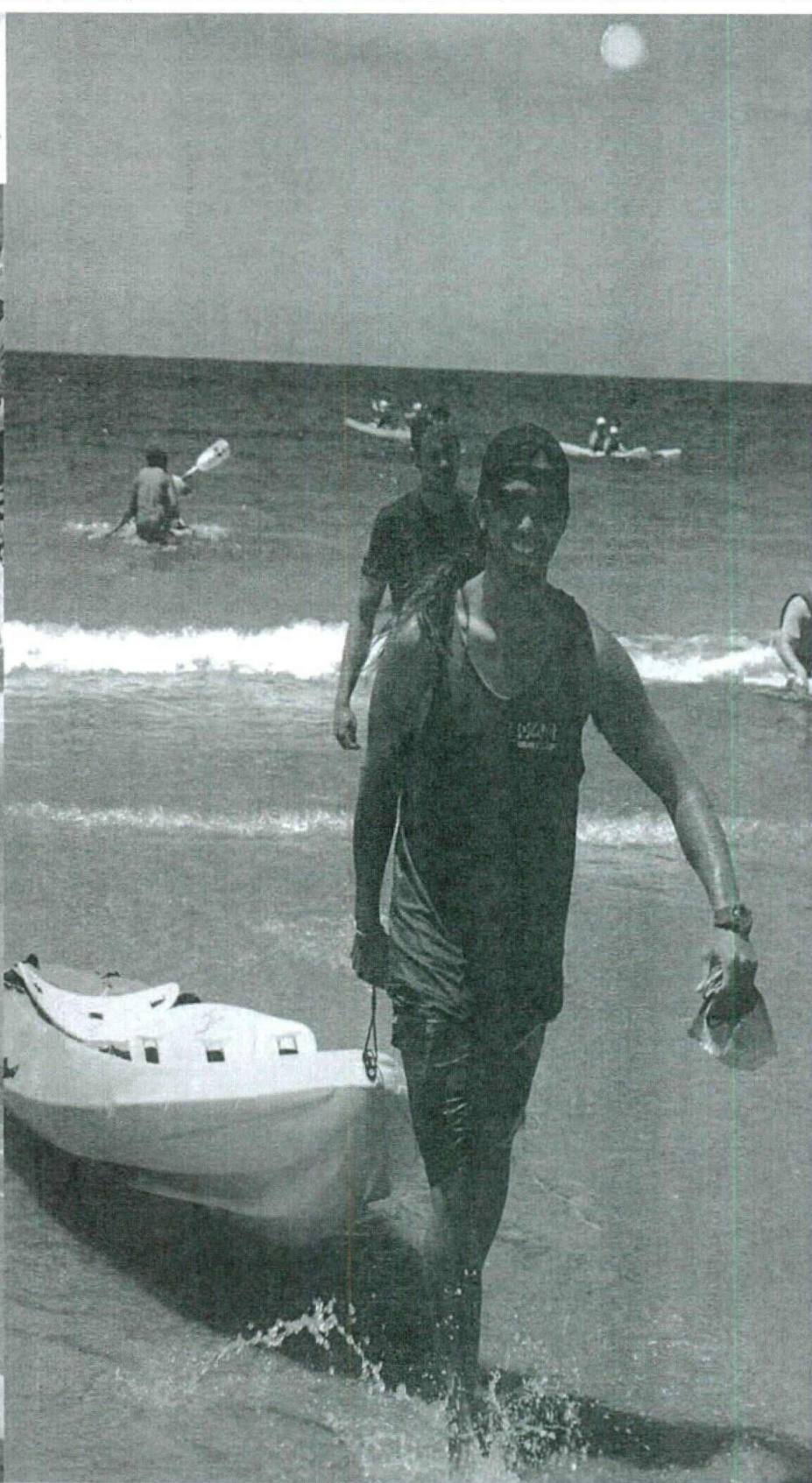
La Jolla Kayak

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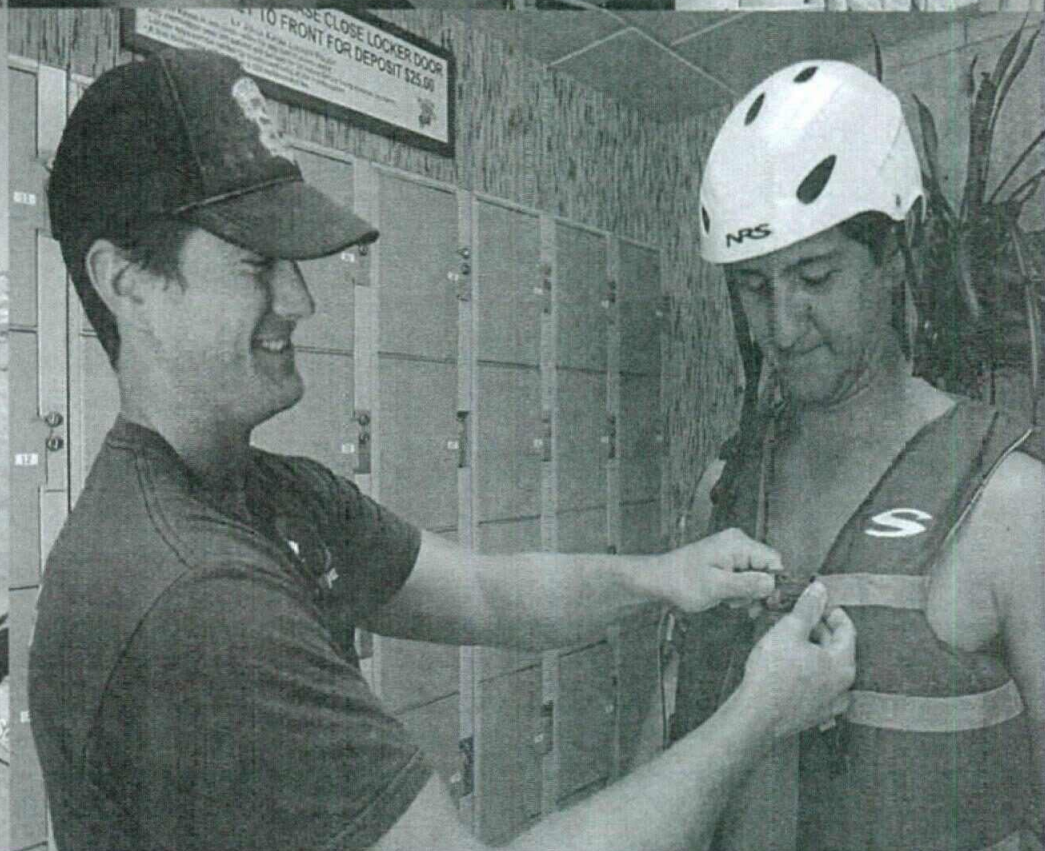
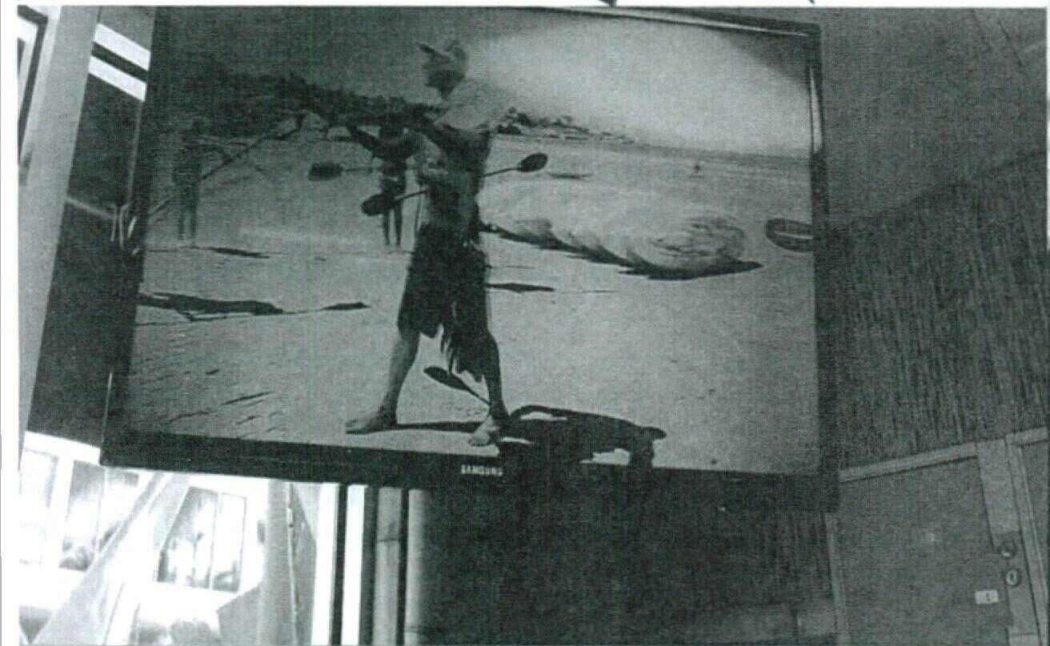
La Jolla Kayak



La Jolla Kayak



La Jolla Kayak



LA JOLLA KAYAK OPEARTIONAL LOGISTICS

Total Kayaks Used in Operating Plan

To provide service for kayak tours and rentals, La Jolla Kayak will use approximately sixty-five (65) kayaks in its proposed operations with 14 tours and 12 kayak rentals. All kayaks will be stored inside our storefront location on Avenida de la Playa and our storage location, also located at on Avenida de la Playa. (See "Operating Plan 4F.i-ii" in this proposal for further details on the storefronts and the ability to demonstrate this requirement).

Hours of Operation

Hours during the peak season, March 15th, 2020 to Sept. 30, 2021 are as follows:

- Open every day from 8:00 AM to sunset
- No Kayak Tours or Rentals on July 4th

Hours during the off-season are as follows:

- Open every day from 8:30 AM to sunset

No deliveries will be made to the Boat Launch before 8:00 AM both peak and off-peak season:

All kayak tours and rentals will return to the boat launch at least 15 minutes before sunset.

Kayak Tours & Rental Prices

La Jolla Kayak offers very competitive pricing and is committed to continuing to make this an affordable activity for everyone. Due to the competitive nature of this market, the pricing at La Jolla Kayak is subject to change and can vary due to marketing promotions, reduced rates for special groups, third party promotions, etc.

The Original Kayak Tour: 90 minutes (1.5 hours)

Peak Season	\$69-\$109/double kayak	\$49-\$79/single kayak
Off-season	\$69/double kayak	\$39/single kayak

Kayak and Snorkel Tour: 90 minutes (1.5 hours) (available from March through October)

Peak Season	\$99-\$139/double kayak	\$59-\$89/single kayak
Off-season	\$79/double kayak	\$49/single kayak

*Customers on a kayak snorkel tour take the equipment out after the tour for snorkeling.

Whale Watching Tour: 150 minutes (2.5 hours) (available December 15 to February 15)

Off-season	\$99/double kayak	\$59/single kayak
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Kayak Tour Group pricing for Private Groups, Corporate Groups, Destination Management companies, Special Events, School Groups, etc.

(Pricing ranges depend on which tour is requested)

Peak Season	\$30-\$55 per person
Off-Season	\$25-\$50 per person

Kayak Rental Prices (90 minutes)

Peak Season	\$55-\$75/double kayak	\$35-\$50/single kayak
Off-season	\$40/double kayak	\$30/single kayak

LA JOLLA KAYAK'S OPERATIONAL ADHERENCE TO "EXHIBIT C" KAYAK CONCESSIONS

As part of La Jolla Kayak's operating plan, the following addresses each of the one through thirteen (1-13) requirements that are part of Exhibit C-Requirements for Kayak Concessions. All of La Jolla Kayak's staff which includes kayak tour guides, beach duty employees, call center and sales staff and managers must read and sign "Exhibit C" from our current kayak concessions agreement every season and it is kept in their employee files. We hold several employee meetings throughout the peak season time period to review these rules, to make sure questions are being addressed and also to review and internal or Lifeguard feedback from the Lifeguard Ambassador Calibration meetings. La Jolla Kayak prides itself in having an excellent and extremely safe operational report with the Lifeguard Ambassadors and responds in a very timely manner with any issue or questions that may arise.

1. Ocean Conditions and Safety

- La Jolla Kayak checks the surf report daily by calling the San Diego City Lifeguard Reporting Number at (619) 221-8824 and utilizes the information for our operation. In addition, La Jolla Kayak continuously monitors the ocean and weather conditions to give clients and tour guides up-to-date advisories of unsafe areas. This information is posted on a daily information board at the Kayak shop and is constantly updated.
- La Jolla Kayak will adhere to and is aware of the four (4) stages of Hazard Alerts implemented by the San Diego City Lifeguard Division which are as follows:
 - Hazard 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 tour boats (4:1 ratio)) and launching/retrieving staff is increased independent of one another. 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.
- Risk to clients is constantly assessed and La Jolla Kayak will close down operations when there is any concern for client safety and well-being even if the City has not called one of the Hazard Alerts above. This includes, but is not limited to:
 - ✓ Large surf
 - ✓ Water temp
 - ✓ Visibility

- ✓ Strong Santa Ana winds
- ✓ Lightning
- ✓ Rough ocean conditions
- La Jolla Kayak acknowledges that the San Diego City Lifeguards reserve the right to close the boat launch and/or terminate any kayak tours and/or rentals based on safety conditions and La Jolla Kayak will adhere to this at all times.
- Beach staff is some of the first to know about the changing conditions and the surf alert protocols established by the lifeguards and keeps constant communication between lifeguard ambassadors and management in order to act accordingly to the requirements outlined by the specific alert level.

2. Identifying Markers

- La Jolla Kayak's staff will be readily identifiable as authorized employees and/or agents of La Jolla Kayak through wearing a company shirt and/or rash guard with a logo in plain view. La Jolla Kayak's tour guides are clearly identifiable from clients with these uniforms. We currently provide all employees with a blue shirt that says "La Jolla Kayak Staff/Crew" blue rash guards for tour guides that say "La Jolla Kayak Tour Guide" and Manager/Lead positions have a grey shirt that says "La Jolla Kayak Staff" for easy identification by clients, the general public and emergency personnel. Employees in the store are also required to wear company shirts and name tags at all times.
- All kayaks used in La Jolla Kayak's operations are marked with our company name "LJK" and numbered individually. These markings are clearly legible at all times and can be seen from a distance of at least fifty (50) feet.
- All kayaks utilized for rentals are recorded by boat number at the time rented for the corresponding clients so that in the event of an emergency, this allows immediate access to the client's information for a quick response.
- The City's flag identification system implemented in the previous 2 concession agreements works very well and La Jolla Kayak follows the rules of this system as stated below:
 - Every kayak used in La Jolla Kayak's operation has a flag attached to the stern of the vessel which designates its intended use.
 - The flag is a minimum size of 8' by 11' and is visible from the shore.
 - All individual kayak rentals have a blue flag
 - All tour guide kayaks have a red flag

3. Concession Site/Location

- La Jolla Kayak conducts all its business transactions within its storefront. All La Jolla Kayak tour participants and renters are fitted for equipment and met inside La Jolla Kayak's storefront location on Avenida de la Playa. This includes the orientation for tours and rental customers watching the required safety videos inside the store. Training as required for the kayak tours will be held at the City's designated location which is at the Boat Launch. La Jolla Kayak acknowledges the City's policy on this and adheres to these requirements at all times. (see "Operating Plan 4.F.i-ii" in the proposal for Location pictures of storefront and storage of kayaks).

4. Boat Launch/Operator Vehicles

- La Jolla Kayak has 2 commercial trucks and a customer shuttle 12-passenger van. The commercial trucks used for the beach deliveries are "4-wheel drive" and possess current registration. The trucks are specifically maintained to handle the challenges of driving on various launch conditions.
- La Jolla Kayak has 3 off-site parking spaces all day and overnight at the Ace Parking lot on Herschel Avenue (see "Operating Plan 4.Eii" in this proposal for pictures of parking spaces). In the peak season, employees report to work and park in these spaces trading out their vehicles for La Jolla Kayak vehicles. When La Jolla Kayak vehicles are not in use, they will be parked in this off-site parking. This has allowed for 3 employee parking spaces along with off-street overnight parking for La Jolla Kayak's 3 commercial vehicles, a commercial van for customer transportation and 2 delivery commercial trucks. All La Jolla Kayak vehicles and trailers are clearly marked with our company "La Jolla Kayak" name and company contact number. This marking is done with magnetic signage on each vehicle and plainly visible from a distance of 100 feet.
- La Jolla Kayak's staff is very aware of the possible situations that can arise with the constant driving and delivery of kayaks back and forth to the boat launch from the store. In recent years we have implemented extended training and focus on safe and efficient truck expediting. Our truck operators are trained with a minimum of (40) hours of "ride along's" with experienced operators before they are permitted to drive on the beach.
- La Jolla Kayak always operates with two (2) employees in the truck to ensure that while one is driving the other is a second set of eyes to watch out for pedestrians and potential hazards on the launch.
- When arriving at the launch, drivers stop to observe pedestrians and other vehicles and then proceed to find safest spot to keep the launch as clear as possible. If backing up is required, this is a (2) person process, one is out of the truck ensuring that the perimeter of the truck is clear, and that pedestrians and beach patrons are aware to stay clear.
- Truck operators adhere to the rule of a drive speed no more than 5mph on the boat launch.
- At all times before starting the truck employees check around and under the truck to check for any possible obstacles near the vehicle. The launch is a critical and busy aspect of the operation and requires a high level of focus to ensure the congested area remains safe.
- Staff is required to check brakes on trucks and maintain truck operations to ensure safety.

- La Jolla Kayak ensures that the boat launch will be clear at all times and understands and adheres to the fact that kayaks must not and will not be left in a position that obstructs free use of the launch area.
- Essential to San Diego lifeguards, the Emergency Access Lane is always kept clear during operational hours by our beach crew to establish a safe and expedient way for lifeguard vehicles to pass through without interference from both the public and our clients. Great care is taken to make sure all equipment and personnel are clear of this area at all times.
- As soon as guests arrive on the beach, they are escorted away from the emergency access lane and into the designated instruction area to await departure. Beach staff ensures that each guest is properly informed on the area and helped out to and from the water. Upon return, clients are then directed back to our main location to return gear in order to clear the beach of unnecessary congestion. It is always our priority to keep the beach as clear as possible.
- La Jolla Kayak understands the rules of the street and obeys all parking, posted signs, curb markings and any direction provided by the City.
- La Jolla Kayak does not transport sand into city streets and alleys and is proactive about keeping all surrounding areas to its storefronts swept for sand, etc.
- La Jolla Kayak staff is trained and is aware to make a complete stop at the entrance to the Boat Launch and is directed by another La Jolla Kayak employee to monitor the safety of moving forward onto the launch and off the launch as well.
- All La Jolla Kayak employees driving company vehicles possess a valid California driver's license. La Jolla Kayak implements a DMV pull on all employees as part of our vehicle insurance.

5. Concession Site Regulations

- La Jolla Kayak shall conduct all rigging of kayaks and training of clients on dry land at the City designated site at the La Jolla Shores boat launch. Keeping the boat launch clear as much as possible is always a priority of La Jolla Kayak.
- La Jolla Kayak will use the City's designated storage area for paddles and boats as awarded. This area is always kept in an orderly and organized manner complying with the City's requirements. La Jolla Kayak created a paddle rack that has been adopted by other vendors which makes storing these items very clean and orderly, easy to access for clients.
- La Jolla Kayak adheres to the City's requirement of a fifteen (15) minute drop off and pickup of kayaks and materials on the beach. This has been greatly improved with the current tour schedules in place that have provided much more efficient recycling of boats in tours and less truck runs.
- La Jolla Kayak adheres to all laws, rules and regulations for traffic at the boat launch and on the City streets at all times. This includes but is not limited to speed, staging, parking, and traffic flow with the utmost concern for the safety of the public.

6. Maximum number of tour participants/Tour guide to client ratios

La Jolla Kayak ensures that kayak tours shall never exceed twelve (12) kayaks total consisting of ten (10) client kayaks and two (2) tour guide kayaks. La Jolla Kayak ensures that there will be at least one (1) guide for every five (5) client kayaks (5:1) ratio. If a kayak tour exceeds five (5) client kayaks, an additional tour guide will be added. The ratio of clients to tour guides will never exceed (10) client individuals to one (1) tour guide (10:1) regardless of the number of kayaks. La Jolla Kayak also acknowledges and adheres to Surf Alert stages and at times it is required that these ratios are even smaller.

7. Water Activity Zones and Areas of Special Interest

- La Jolla Kayak ensures 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.
- La Jolla Kayak ensures that all kayak rentals, whether for tours or for individuals, will adhere to San Diego Municipal Code section 63.20.9 defining rules for boat beaching and launching.
- La Jolla Kayak always takes extreme caution when entering the Sea Caves and that courtesy and professionalism is extended to all others in the area. La Jolla Kayak also acknowledges that access to the sea caves is a privilege that could be revoked by the City at its sole discretion.
- **La Jolla Kayak has Mandatory Training, Safety and Rules for Kayak Renters**
 - La Jolla Kayak advises all individual kayak renters not to venture near the rocks and not to enter the caves. Kayak renters are also told to remain out of the swim lane at La Jolla Cove.
 - La Jolla Kayak takes safety very seriously and makes it a number one priority. Kayak rental clients go through an extensive set of safety standards. Clients are given a specific review of unsafe and restricted areas (per San Diego Municipal Code section 63.20.2 water activity zone areas) on a map by trained staff members. (see "Operating Plan 2bi" for copy of map). A laminated version of this map is given to the client and highlights the following key points:
 - ✓ Clients are required to wear helmets even though they are instructed not to enter La Jolla Sea Caves unless they with one of our tour guides on a tour
 - ✓ Stay out of the caves and stay a minimum of 50 feet away from any cliff face or exposed rock (will be adjusted to a greater amount depending on the conditions)
 - ✓ Stay out all of the swimming areas and lanes (including those at La Jolla Cove) as marked on the map and watch for swimmers, as they have the right of way at all times
 - ✓ Do not go further North or South of the Map's Boundaries
 - ✓ No kayak surfing allowed at La Jolla Shores
 - ✓ As a general rule, kayakers need to stay 200 feet off the beach

- La Jolla Kayak's kayak rental clients are also required to watch an instructional video which is shown in two staging areas of the store. This video details and reiterates the restricted areas and hazards that may be encountered. La Jolla Kayak's beach staff, located at the boat launch, assist in the launching and retrieval of kayaks as well as address any last-minute questions and/or safety concerns.
- La Jolla Kayak ensures that all kayak guides, kayak tours and individual kayak rentals are knowledgeable about and comply with the restrictions set forth in the Marine Mammal Protection Act of 1972 (MMPA), which prohibits the harassment of many mammal species including seals and sea lions. La Jolla Kayak acknowledges that violations to 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. La Jolla Kayak ensures responsible viewing of wildlife by employees and customers and follows the following 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
- La Jolla Kayak acknowledges any violation of San Diego Municipal Codes or any other codes applicable in the State of California by La Jolla Kayak or individual clients may result in the issuance of citations.

8. Equipment

- La Jolla Kayak ensures that at least one (1) tour guide on each tour is equipped with a U.S. Coast Guard approved visual and auditory signaling devices, a handheld waterproof UHF radio and/or cell phone and proper training is ensured in their use.
- All La Jolla Kayak tour clients participating in kayak tours of the La Jolla Sea caves area will possess and wear a properly fitted and secured helmet, appropriate for whitewater use. La Jolla Kayak's tour guides ensure this fitting at the store prior to leaving for the tour for each client. La Jolla Kayak provides each client with a properly fitted U.S. approved Type III or Type V personal floatation device (PFD). La Jolla Kayak staff ensures that each client is properly fitted into these PFD's prior to leaving for the Boat Launch.
- La Jolla Kayak prides itself in keeping high quality and safe equipment always in proper working order and condition. The following is a summary of our equipment and standards:
 - ✓ Ultra-stable, sit-on-top kayaks with sealed hulls allows the kayak to float even when capsized
 - ✓ Staff assistance for clients when choosing approved lifejackets (Personal Floatation Devices (PFD's)) and helmets to ensure proper fitting
 - ✓ Staff inspects equipment daily
 - ✓ Staff inspects truck daily and ensures appropriate fuel levels and that brakes are working properly
 - ✓ All kayak hulls and lifejackets in use have been approved by the United States Coast Guard
 - ✓ Tour guides are required to carry waterproof UHF radios or cell phones, a Coast Guard approved signaling device and a noise-making device for immediate contact with emergency personnel
 - ✓ High quality helmets are provided for kayak tours
 - ✓ Wetsuits are optional but available to protect clients from hypothermia
 - ✓ A large first aid kit is kept on site at La Jolla Kayak storefront to treat minor injuries to employees and clients as well as on the boat launch to provide basic first aid to our clients coming off the water
- La Jolla Kayak adheres to the rule that no kayaks will be dropped off at the designated rental kayak storage area prior to 8:00AM and all kayaks are removed before dark.

- La Jolla Kayak always has at least three (3) employees on beach duty to monitor the rental kayak storage at all times when any kayaks or equipment are on the beach. In the peak season La Jolla Kayak has four to seven (4-7) employees on beach duty to help with safe launch and retrieval of kayaks along with management of the kayak rental process and safe truck deliveries, etc.
- La Jolla Kayak maintains its kayak storage area in a neat and orderly manner at all times and all rental kayaks and/or equipment are neatly stacked within the designated area so as not to impede any other activities within the boat launch area.
- La Jolla Kayak acknowledges that the City assigns the storage areas and has the right to adjust the location of the rental kayak storage sites, at any time, in its sole discretion based on safety or any other considerations.

9. Waivers

La Jolla Kayak has a signed waiver on file 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 clients under the agreement. La Jolla Kayak's liability insurance also indemnifies the City from the above issues. (see copy of waivers attached on next 2 pages).

DATE: _____ TIME: _____ KAYAK #: _____ QUOTE: _____

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Cash Check Charge Gift Cert:

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ACKNOWLEDGEMENTS OF RISKS, ASSUMPTION OF RISK & RESPONSIBILITY AND RELEASE LIABILITY:

WARNING! There are significant elements of risk in any adventure, sports or activity associated with water, watercraft and the outdoors. Although we have taken responsible steps to provide you with the appropriate equipment and/or skilled staff so that you can enjoy an activity for which you may not be skilled, this activity is not without risk. Certain risks cannot be eliminated without destroying the unique character of this activity. The same elements that contribute to the unique character of this activity can be the cause of loss or damage to the equipment or cause accidental injury, illness or, in extreme cases, permanent trauma or death.

ACKNOWLEDGEMENT OF RISKS: I acknowledge that the following describes some, but not all, of those risks: (1) Changing water flow, tidal currents, wave action and ships' wakes; (2) Collision with other water craft and manmade or natural objects; (3) Inclement weather, lightning, variances and extremes of wind, weather and temperature; (4) My sense of balance, physical coordination, ability to operate equipment, swim, and follow directions; (5) Collision, capsizing, sinking, or other hazards which result in wetness, injury, exposure to the elements, hypothermia and/or drowning; (6) Getting in or out of the craft; (7) Travel, including to or from the activity; (8) The presence of marine life forms; (9) Equipment failure or operator error; (10) Heat or sun-related injuries; (11) Fatigue, chill and/or dizziness, which may diminish my reaction time and increase the risk of an accident.

I am aware that this activity may entail risks of injury or death. I understand the description of these risks is not complete and that unknown or unanticipated risks may result in injury, illness or death.

EXPRESS ASSUMPTION OF RISK AND RESPONSIBILITY: I agree to assume responsibility for the risks identified herein and those risks not specifically identified. My participation in this activity is purely voluntary. No one is forcing me to participate. I verify that I am physically fit, not under the influence of alcohol or drugs and sufficiently qualified, trained and capable to participate in these activities. Therefore, I assume full responsibility for myself, including any minor children, for whom I am responsible, for bodily injury, accidents, illness, death, loss of personal property and expenses thereof as a result of any accident that may occur. I elect to participate in spite of the risks. I agree to wear a fastened United States Coast Guard approved personal flotation device (life jacket) for the duration of this activity. I also agree to not stand in the watercraft, to return at the first sign of bad weather with the rental equipment, not consume or transport alcoholic beverages or illegal/controlled substances and to follow the instructions of personnel when given. I will not leave the area of operation and I will stay at least fifty (50) feet away from any cliffs and/or exposed reefs. The area of operation is defined as protected waters only; not to pass the cove buoys. I further agree that I will not SURF in the kayak.

I agree that the equipment that is returned broken, but repairable, will be charged to me at the repair rate and must be paid prior to new equipment being issued and/or deposit refunded. I further agree that any damage incurred during the rental period will be charged to me.

I assume the risk(s) of personal injury, accidents and/or illness, including but not limited to sprains, torn muscles and/or ligaments; fractures or broken bones; eye damage; cuts; wounds; exposure; head, neck and/or spinal injuries; bite or attack by animals, allergic reaction, shock, paralysis or death.

COVENANT OF GOOD FAITH: I recognize that you, the provider of services, will operate under the covenant of good faith and fair dealing, but you may find necessary to terminate an activity due to the forces of nature, medical necessities or other problems, and/or refuse to terminate the participation of any person you judge to be incapable of meeting the rigors or requirements of participating in the activity. I accept your right to take such actions for the safety of myself and/or other participants. I further understand that La Jolla Kayak & Company reserves the right to confiscate rental equipment being misused.

AUTHORIZATION: I hereby authorize any medical treatment deemed necessary in the event of any injury while participating in the activity. I either have appropriate insurance or, in its absence, agree to pay all costs of rescue and/or medical services as may be incurred on my behalf.

RELEASE: In consideration of services and/or property provided, I, for myself and any minor children for which I am parent, legal guardian or otherwise responsible, any heirs, personal representatives or assigns agree that: LA JOLLA KAYAK & COMPANY and OCEAN KAYAKS and each of their principals, directors, officers, agents, employees and volunteers, their insurers and each and every land owner, municipal and/or governmental agency upon whose property an activity is conducted, from all liability and waive any claim for damage arising from any cause whatsoever (except that which is the result of gross negligence).

Opt Out ☐ **PHOTO RELEASE:** I hereby grant the rights to publish my name, attributes, image, biography, statements, performance, photo, video or any and all other audio or visual image ("images") and hereby grant to LA JOLLA KAYAK & COMPANY, OCEAN KAYAKS AND HBK ADVENTURE TOURS and/or those acting for their authority, any and all perpetual rights to edit, use, publish, license, transfer and/or broadcast the images in any advertising, promotional and publicity materials in all media for the purpose of advertising, promoting and publicizing the products and/or services of LA JOLLA KAYAK & COMPANY, OCEAN KAYAKS AND HBK ADVENTURE TOURS and for any and all other services.

RESCHEDULING/CANCELLATION POLICY: Rescheduling/Cancellation is possible at no extra charge as long as rescheduling/cancellation is requested 48 hours prior to the event. Cancellation at the time of event or non-participation are not subject to refund. No refunds will be given for inclement weather or for activities beyond the control of La Jolla Kayak.

IMPORTANT!!! MUST READ

NO INS AND OUTS AT THE BOAT LAUNCH, KEEP KAYAKS AWAY FROM SWIM ZONES AND THE SWIMMING LANE AT THE COVE AND ALL OTHER PLACES ASKED BY AUTHORITY. STAY AWAY FROM ALL EXPOSED REEFS AND SURF. ENTERING CAVES WITHOUT INSTRUCTOR IS NOT PERMITTED. RENTAL EQUIPMENT MUST BE RETURNED TO THE SHOP TO AVOID A SURCHARGE OR LOST RENTAL FEE. ALL THOSE WHO DO NOT FOLLOW THESE GUIDELINES WILL HAVE THEIR RENTALS TERMINATED.

I HAVE READ THE FOREGOING WARNING, ACKNOWLEDGEMENT OF RISKS, ASSUMPTION OF RISK & RESPONSIBILITY AND RELEASE OF LIABILITY, I UNDERSTAND THAT BY SIGNING THIS DOCUMENT I MAY BE WAIVING VALUABLE LEGAL RIGHTS.

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

DATE: _____ TIME: _____ KAYAK #: _____ QUOTE: _____

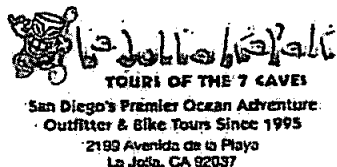
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ACKNOWLEDGEMENTS OF RISKS, ASSUMPTION OF RISK & RESPONSIBILITY AND RELEASE LIABILITY:

WARNING! There are significant elements of risk in any adventure, sports or activity associated with water, watercraft and the outdoors. Although we have taken responsible steps to provide you with the appropriate equipment and/or skilled staff so that you can enjoy an activity for which you may not be skilled, this activity is not without risk. Certain risks cannot be eliminated without destroying the unique character of this activity. The same elements that contribute to the unique character of this activity can be the cause of loss or damage to the equipment or cause accidental injury, illness or, in extreme cases, permanent trauma or death.

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I am aware that this activity may entail risks of injury or death. I understand the description of these risks is not complete and that unknown or unanticipated risks may result in injury, illness or death.

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I assume the risk(s) of personal injury, accidents and/or illness, including but not limited to sprains, torn muscles and/or ligaments; fractures or broken bones; eye damage; cuts, wounds, exposure; head, neck and/or spinal injuries; bite or attack by animals, allergic reaction, shock, paralysis or death.

COVENANT OF GOOD FAITH: I recognize that you, the provider of services, will operate under the covenant of good faith and fair dealing, but you may find necessary to terminate an activity due to the forces of nature, medical necessities or other problems, and/or refuse to terminate the participation of any person you judge to be incapable of meeting the rigors or requirements of participating in the activity. I accept your right to take such actions for the safety of myself and/or other participants. I further understand that La Jolla Kayak & Company reserves the right to confiscate rental equipment being misused.

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Opt Out ☐ **PHOTO RELEASE:** I hereby grant the rights to publish my name, attributes, image, biography, statements, performance, photo, video or any and all other audio or visual image ("Images") and hereby grant to LA JOLLA KAYAK & COMPANY, OCEAN KAYAKS AND HBK ADVENTURE TOURS and/or those acting for their authority, any and all perpetual rights to edit, use, publish, license, transfer and/or broadcast the images in any advertising, promotional and publicity materials in all media for the purpose of advertising, promoting and publicizing the products and/or services of LA JOLLA KAYAK & COMPANY, OCEAN KAYAKS AND HBK ADVENTURE TOURS and for any and all other services.

RESCHEDULING/CANCELLATION POLICY: Rescheduling/Cancellation is possible at no extra charge as long as rescheduling/cancellation is requested 48 hours prior to the event. Cancellation at the time of event or non-participation are not subject to refund. No refunds will be given for inclement weather or for activities beyond the control of La Jolla Kayak.

IMPORTANT!!! MUST READ

NO INS AND OUTS AT THE BOAT LAUNCH, KEEP KAYAKS AWAY FROM SWIM ZONES AND THE SWIMMING LANE AT THE COVE AND ALL OTHER PLACES ASKED BY AUTHORITY. STAY AWAY FROM ALL EXPOSED REEFS AND SURF. ENTERING CAVES WITHOUT INSTRUCTOR IS NOT PERMITTED. RENTAL EQUIPMENT MUST BE RETURNED TO THE SHOP TO AVOID A SURCHARGE OR LOST RENTAL FEE. ALL THOSE WHO DO NOT FOLLOW THESE GUIDELINES WILL HAVE THEIR RENTALS TERMINATED.

I HAVE READ THE FOREGOING WARNING, ACKNOWLEDGEMENT OF RISKS, ASSUMPTION OF RISK & RESPONSIBILITY AND RELEASE OF LIABILITY. I UNDERSTAND THAT BY SIGNING THIS DOCUMENT I MAY BE WAIVING VALUABLE LEGAL RIGHTS.

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

Print Name: _____ Signature: _____

Address: _____

Phone #: _____ Date of Birth: _____

ENTERING CAVES CAN RESULT IN A \$350⁰⁰ FINE.

10. Safety Precautions/Emergency Response Plan

Safety Precautions:

- La Jolla Kayak maintains 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. La Jolla Kayak's beach duty staff keeps a log of all of the kayak rental clients and the respective boat numbers. Detailed information is kept on the waivers that are at the kayak shop and in La Jolla Kayak's POS system which the Beach Duty staff can monitor via I-Pad device on the beach.
- La Jolla Kayak clients are given a specific review of unsafe and restricted areas (per San Diego Municipal Code section 63.20.2 water activity zone areas) on a map by trained staff members. (see "Operating Plan-Chapter 2b. I" for copy of the map). A laminated version of this map is given to the client and highlights the following key points:
 - ✓ Clients are required to wear helmets even though they are instructed not to enter La Jolla Sea Caves unless they with one of our tour guides on a tour
 - ✓ Stay out of the caves and stay a minimum of 50 feet away from any cliff face or exposed rock (will be adjusted to a greater amount depending on the conditions)
 - ✓ Stay out all of the swimming areas and lanes (including those at La Jolla Cove) as marked on the map and watch for swimmers, as they have the right of way at all times
 - ✓ Do not go further North or South of the Map's Boundaries
 - ✓ No kayak surfing allowed at La Jolla Shores
 - ✓ As a general rule, kayakers need to stay 200 feet off the beach
- La Jolla Kayak provides each client with a properly fitted U.S. approved Type III or Type V personal flotation device (PFD). La Jolla Kayak staff ensures that each client is properly fitted into these life jackets prior to leaving for the Boat Launch.
- La Jolla Kayak has a strict incident report policy. If a client reports an injury or if an employee is aware of an injury or incident whether it requires medical attention or not, La Jolla Kayak completes an internal incident report and keeps them on file for 3 years. In the event that such an incident requires medical attention or services and occurs during the performance of La Jolla Kayak's services from launching to beaching, La Jolla Kayak will inform the San Diego Fire-Rescue Lifeguards in writing of such injury.

- La Jolla Kayak is confident that its staff is well-equipped to handle an emergency event if one should occur; based on our staff's strong certifications, La Jolla Kayak's preventative safety measures and its Emergency Response Plans. These plans are included in our employee handbook and posted charts are in both store locations. See below for details of our Emergency Response Plan below.
- **Additional Safety Measures (See "Operating Plan-Chapter 2bii" for picture examples of safety protocol)**
 - ✓ Kayak tour guides are additional support in the water as they can monitor the area around RT's Beach, Emerald Cove and other visually obstructed areas for kayakers, swimmers and other people in dangerous situations or in need of assistance. They also educate the public and provide assistance when necessary, as well as contact emergency personnel if required. Their main focus is their kayak tour however their additional support on the water is additive.
 - ✓ La Jolla Kayak's minimum age requirement is six (6) years old, and only in a double kayak with a responsible adult of eighteen (18) years or greater.
 - ✓ La Jolla Kayak holds bi-weekly employee meetings during the peak season and monthly meetings during the off season to brief all employees on changes to safety protocol, recent incident/accidents and to review current procedures. Meetings also allow staff members to be briefed on upcoming races, tournaments and other events occurring impacting the La Jolla Shores area.

- La Jolla Kayak is confident that its staff is well-equipped to handle an emergency event if one should occur; based on our staff's strong certifications, La Jolla Kayak's preventative safety measures and its Emergency Response Plans. These plans are included in our employee handbook and posted charts are in both store locations. See below for details of our Emergency Response Plan below:

Emergency Response Plan:

La Jolla Kayak staff is well trained in preventative measures taken to ensure that incidents do not occur however when an emergency does occur our staff is well trained to handle the situation with confidence thanks to our extensive training program, veteran tour guides and numerous certifications. (See "Operating Plan 4.K Emergency Response Plan" in this proposal for La Jolla Kayak's detailed Emergency Response Plan and Emergency Response Charts at posted at La Jolla Kayak's Storefront).

11. Minimum Requirements for Tour Guides

- La Jolla Kayak ensures that all kayak tour guides are at least eighteen (18) years of age.
- La Jolla Kayak ensures that all kayak tour guides having a minimum of the following requirements:
 - ✓ 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 of the equivalent.
 - ✓ Certificate of completion for the Lifeguard Division Kayak Guide Orientation Training
 - ✓ A Certificate of completion of kayak guide training.
- All La Jolla Kayak staff and personnel are required to read and understand "Exhibit C" every season during their employment. A signed off copy of "Exhibit C" confirming their understanding of this is kept in their employee file.
- All La Jolla Kayak staff are trained to have general knowledge of emergency access areas in the store and on the beach as well as evacuation routes, and how to contact and assist any emergency response personnel.
- La Jolla Kayak takes pride in hiring only the most qualified and motivated individuals to provide clients with the safest and most enjoyable experience of kayaking through the La Jolla Ecological Reserve. La Jolla Kayak is also very proud to have several employees that have been with us for more than five years. Many of our seasonal employees also return each year. La Jolla Kayak is an equal opportunity employer.

Required Employee Experience and Qualifications:

(Please note some are tour guide specific below)

- Knowledge of the ocean
- Excellent swimming ability
- Kayaking experience preferred
- Individuals with a "safety first" mentality
- Customer service skills and experience
- Strong interpersonal and decision-making skills
- Fast-learner and enthusiastic
- Ability to work in fast-paced environment
- Enjoys working outdoors with a diverse range of people
- Compassionate to the needs of varying individuals

- Ability to work with patience, reliability and dependability
- Committed to La Jolla Kayak's operational rules and adherence to safety
- Strong Time Management Skills
- Strong References and previous work experience required
- All tour guides must be at least eighteen (18) years of age.
- Valid California Driver's License.
- La Jolla Kayak is a "drug free" environment and has a enforces a "zero tolerance policy"

In addition to some of the above criteria, during the interview process we run through some potential scenarios one might come across in our operations to see how the candidates respond and think through the situation. Prior to hiring individuals for tour guide positions, a lead La Jolla Kayak Manager will take candidates out for a "paddle out" to assess their skill set out on the water.

La Jolla Kayak Training Program Overview:

La Jolla Kayak prides itself on the excellence of its people, highly trained and seasoned veterans who provide the public with a safe way to experience the ocean in a way that is unique to our area. We educate our crew members with the most extensive training programs in the industry. We invest in our employees because we believe that is what makes the best impact on the experiences and singles us out from other operators as being the leaders in this area. Our staff is the face of our business, they are members of this community and they care about giving our guests the safest, most enjoyable experience possible. Our team has respect for the community, the marine life and for the ocean in which they operate every day. We take the training of our people very seriously and always strive for the best.

Prospective Tour Guide Requirements:

Required Experience and Qualifications:

- Knowledge of the ocean
- Excellent swimming ability
- Kayaking experience preferred
- Individuals with a "safety first" mentality
- Customer service skills and experience
- Detail oriented and excellent situational awareness
- Strong interpersonal and decision-making skills
- Fast-learner and enthusiastic
- Ability to work in fast-paced environment
- Enjoys working outdoors with a diverse range of people

- Compassionate to the needs of varying individuals
- Ability to work with patience, reliability and dependability
- Committed to La Jolla Kayak's operational rules and adherence to safety
- All tour guides must be at least eighteen (18) years of age.
- Valid California driver's license
- After selection, tour guides are evaluated further before leading a group on their own
- La Jolla Kayak is an equal opportunity employer
- La Jolla Kayak has a zero-tolerance policy and is a "drug free" environment

CPR for the Professional Rescuer

As an ocean going professional it is our duty to be able to respond to cardiac or breathing emergencies until more advanced aid arrives. All guides are required to take this course so that they have the skills to assess a situation, provide basic life support and provide care when needed. The following are some of the topics covered by the course that help our crewmembers become a force for good, assisting the San Diego City lifeguards whenever possible.

- This is a required certification for all tour guides
- Learn how to respond to respiratory and cardiac emergencies
- Learn rescue breathing, CPR / two-rescuer CPR
- First aid response for choking
- The use of a resuscitation mask and bag-valve mask resuscitator
- Disease transmission prevention and the systems of the body
- How to use an AED (automated external defibrillator)

Basic First Aid

This is a required certification of all La Jolla Kayak staff. This training teaches participants to identify and care for victims of illness and sudden injuries including:

- ☑ Controlling bleeding
- ☑ Minimizing the effects of shock
- ☑ Caring for musculoskeletal injuries
- ☑ Treating sudden illness due to poisoning
- ☑ Caring for heat and cold related emergencies

City of San Diego Lifeguard Division Kayak Guide Orientation Training Course

All tour guides must complete this training prior to the other ocean training. In 2011, the City of San Diego Lifeguards put this training together to focus on Kayak Tour Guide safety training. The training starts at La Jolla Shores Boat Launch and it is approximately 2 hours in duration. This training includes the following:

- ☐ Identifies the various caves and areas of difficulty/not visible to Lifeguards
- ☐ Underwater reefs and information on the ocean floor structure
- ☐ Advice on danger zones and indicators to look for
- ☐ General overview of area and ecological reserve
- ☐ Review of swim zones and rules
- ☐ Boat Launch Safety

La Jolla Kayak Certified Internal Training Program

This is an internal training course led by a senior level La Jolla Kayak staff member with a minimum of 5-years of experience having guided over 1500 tours in the La Jolla ecological park. Many of our staff members have been previously BCU certified and have completed the San Diego Lifeguards class covering Rips, Rocks Reefs for the La Jolla Cove/Cave area (now replaced by the above mentioned Lifeguard training in 2011). This course covers BCU equivalent concepts in addition to our internal kayak tour guide curriculum. This is training conducted by senior tour guides with BCU certifications. In addition to the BCU equivalent concepts the training further emphasizes the conditions of the La Jolla Shores and cave areas and enhances the skill set of our tour guides.

Main Concepts Covered in Guide Training

Review of Coastal Geography

La Jolla is a very diverse place with features such as the rocky reef and cave areas to our long stretching sandy bottom beaches. Guides are instructed on the local geography as it pertains to the surrounding area. It is required that all guides show proficiency in this subject before being signed off to lead tours. While on tour a certified guide uses this knowledge of the area to educate our clients as well as lead a safe tour. The main features that we emphasize are the reef and rocks in the area stretching past Scripps pier. Areas such as "Devils Slide" reef and "Razor Reef" are pointed out to trainees and explained in detail.

CITY ATTORNEY

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CIVIL DIVISION