

DUPLICATE

**EXHIBIT B
CITY OF SAN DIEGO
KAYAK CONCESSION AGREEMENT**

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and Hike Bike Kayak Sports, Inc. ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "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 in 2014, and CONCESSIONAIRE's proposal in response to that RFP. Attached and incorporated herein are the following documents: Site Map (Attachment A), CONCESSIONAIRE'S Operating Plan (Attachment B), Kayak Concession Requirements (Attachment C). 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 Attachment 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.) shall be waived.

3. Use of Site. This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate Concessions. The term Concessions means an operation involving the conducting of kayak tours and rentals, 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

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tours are to be completed and out of the water fifteen (15) minutes before sunset daily. 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 April 1, 2015 ("Commencement Date"). "Agreement Year" as used in this Agreement means any of the four (4) consecutive twelve (12) month periods beginning with the Commencement Date. The City may extend this Agreement at the end of the initial 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 42 of this Agreement. Following the third year, this Agreement may be extended on a month-to-month basis for up to two additional years at the sole discretion of the CITY.
 7. Holding Over. Any use of the Concession Site by CONCESSIONAIRE after the expiration of this Agreement is not permitted. Any extension of the term of the Agreement beyond sixty (60) months shall require the written approval of 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(s) for April 1, 2015 through Mar 31, 2016, 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(s) shall be incorporated into this Agreement as Attachment B. Beginning with the second Agreement Year, and for every Agreement Year thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming Agreement Year for the CITY's approval. These Operating Plans must be submitted by March 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 Operating Plans included as Attachment B. CITY shall have the right to approve or disapprove the proposed Operating Plan. Once approved, CONCESSIONAIRE shall 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 Attachment C. 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 Attachment C.**

- 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 kayak concessions during times not scheduled for operations in the approved Operating Plan(s) 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 so as 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.
- D. Improvements. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Site now existing or constructed on the Site by CONCESSIONAIRE shall be deemed to be part of the Site and shall become CITY's property free of all liens and claims. All personal property remaining on the Site after expiration or termination shall also become the property of CITY.
- E. 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.

- F. 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 shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Kayak Concession Requirements in Attachment C of this Agreement.

10. Fees.

CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee or the Monthly Minimum Fee, as described below. In the event that 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 ten percent (10.00%) of the Gross Revenue resulting from the Kayak Concession operations permitted under this Agreement during each month of an Agreement Year. 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, Use of Site. All such incidental services or operations must be approved in writing by the CITY prior to the commencement of the additional service or operation. However, any activity conducted on the Site without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The Annual Minimum Fee established for the first Agreement Year following the effective date of this Agreement is eighteen thousand three hundred dollars (\$18,300), which is **one thousand five hundred and twenty five dollars (\$1,525)** 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.J. Time and Place of Payment.

- C. Minimum Fee Adjustment. Beginning with the second Agreement Year, and continuing with each subsequent Agreement Year thereafter, the Annual Minimum Fee will be increased by five percent (5%) of the immediately prior Agreement Year's Annual Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any fees when due, CONCESSIONAIRE shall 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.
- E. 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.F.) 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.
- F. Gross Revenue. "Gross Revenue," as used in this Agreement, shall include all income resulting from the Concession whether received or to become due; provided, however, that Gross Revenue shall 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. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing Gross Revenue. 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 money received by CONCESSIONAIRE from a Groupon sale). Gross Revenue includes revenue generated from all equipment rented or leased for use in CONCESSIONAIRE's Kayak Concessions conducted under this Agreement. All income collected by CONCESSIONAIRE from items rented for use in Concessions, whether used in a tour or with a rental, shall be included in Gross Revenue. Gross Revenues shall not include refund of deposits for CONCESSIONAIRE's tours or Concession related activities (for example, a payment to CONCESSIONAIRE refunded to a customer due to a cancelled tour would not be counted as Gross Revenue). 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.

G. Payment Procedure.

CONCESSIONAIRE shall 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.

H. Inspection Of Records.

- i. Records. CONCESSIONAIRE shall 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 shall 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 shall be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. Regarding

admission charges or concession fees, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. **Financial Statements.** Immediately following July 1, after the end of the 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 shall 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.H.i, shall 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, shall 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. CITY intends to conduct an audit after the third Agreement Year of this Agreement, however, CITY reserves the right to conduct such audits at any time.
- 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%) on an annual basis for any Agreement Year 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 shall be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under this Agreement Section 10.D. CITY shall 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.

- I. 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.
- J. 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.
- K. Security Deposit. The CONCESSIONAIRE shall 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 shall 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 shall 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'Ss Consent, Discretion. Whenever required under this Agreement, CITY's consent or approval shall mean the written consent of CITY, 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 shall 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 shall, 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 shall 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.
16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for:
 - A. Commercial General Liability insurance providing coverage for bodily injury,

including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000). Higher insurance limits may be required by the CITY's Risk Management Department depending on the nature of the activity.

- B. Workers Compensation. Concessionaire must maintain current workers compensation coverage which meets statutory requirements for all employees. One Million Dollars (\$1,000,000) of employers' liability coverage is also required.
- C. Liability Insurance for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-hired vehicles) operated in performing any and all Concessions or other services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.
- D. Causes of Loss-Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at 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.
- E. CONCESSIONAIRE must maintain a protection and indemnity policy, with limits of not less than One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). UNLESS proof is submitted that CONCESSIONAIRE's Kayak Concession operations are under the commercial general liability policy. A certified copy of the CGL policy will be sufficient to meet this requirement.
 - i. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - ii. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'Ss Real Estate Assets Department upon execution of this Agreement.
 - iii. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY.

Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- iv. 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.
- v. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE shall provide proof of continuing insurance on at least an annual basis during the Term. If CONCESSIONAIRE's insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify the CITY and immediately obtain replacement insurance.
- vi. Modification. To assure protection from and against the kind and extent of risk existing on the Site, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall 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 Site in order to meet the requirements of this Agreement.
- vii. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Site or person engaged in the activities permitted under this Agreement. Such report shall 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, and other pertinent information.
- viii. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest on the premium paid by the CITY at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay

such reimbursement and interest on the first (1st) day of the month following CITY's notice. **Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of any and all of its personal property from the Site.**

- ix. All insurers must be licensed to conduct business in the State of California and with exception of workers compensation, be rated "A-, VI" or better by AM Best. If coverage is provided by a surplus lines carrier, it must be listed on the current LESLI list. Any and all deductibles and/or self-insured retentions must be disclosed to the City at the time proof of insurance is provided. All insurers must be acceptable to the City.

- 17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, 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, or maintenance of the Site, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election 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 shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Site, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 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 shall 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 employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE's Risk. CONCESSIONAIRE shall 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. No Nuisance. CONCESSIONAIRE shall 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.
24. No Assignment. CONCESSIONAIRE shall 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 shall 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 Site, CONCESSIONAIRE shall remove the item at its expense within 24 hours 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 shall 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 shall 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 shall 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 shall 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 shall default 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 shall fail 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 shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or

- iii. CONCESSIONAIRE shall make 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 (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall 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 thirty (30) days written notice of intent to terminate to the other party.

- B. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection A above, in the event CONCESSIONAIRE shall default 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 Attachment C 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 shall 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 shall, 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 shall 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 shall 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. 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 shall, 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.

34. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Site. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not store, utilize, or sell any hazardous substance on the Site without CITY's prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of

California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - B. Indemnity. CONCESSIONAIRE shall 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, or maintenance of the Site, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Site, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Site.
 - D. Environmental Assessment. At CITY's option upon expiration or termination of this Agreement, an environmental assessment of the Site shall 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 shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Site, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefore.
35. Waiver. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full

force and effect. The property constituting the Site is CITY-owned and held in trust for the benefit of CITY's citizens. CITY's failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

36. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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:
Hike Bike Kayak Sports, Inc.
2246 Avenida de la Playa
San Diego, CA 92037

43. 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.
44. City's Not-Liability. CITY shall not be liable to CONCESSIONAIRE, its employees, agents, or representatives 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.

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45. 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.

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

Date: 26 MAR 15

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Name: Scott Chadwick
Title: Chief Operating Officer

Date: _____

HIKE BIKE KAYAK SPORTS, INC.:

BY: [Signature]
Name: David Teafatiller / Angela Harrell
Title: COO CEO

APPROVED AS TO FORM:

Effective Date: 26 Mar 2015

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Noah J Brazier
Deputy City Attorney

Environmental Analysis Section Environmental Clearance:

CEQA Section 15301 allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. This permit will allow use of limited areas where no environmental impact would result; and where none of the exceptions listed in EQA Guidelines Section 15300 would apply.

Date: 3/18/15
BY: [Signature]
Name & Title: Myra Herrmann, Senior Planner, planning Department

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ATTACHMENT A
Site Map

ATTACHMENT B
Operating Plan

ATTACHMENT C
Kayak Concession Requirements

SECTION 2 – OPERATING PLAN

Tour Slots and Kayak Rentals

HBK has 8 tour slots and Option A – 12 kayak rentals.

Days and Hours of Operation

HBK is open every day of the week from 8:30am to sunset. We are open every day of the year with the following exceptions: July 4th, Annual Rough Water swim date, and Christmas Day. HBK will also be closed based on inclement weather and days where the ocean conditions are unsafe. HBK may also be closed on days of “Special Events” as notified by the Lifeguards. These hours are consistent through peak and non-peak season.

Pricelist

Peak season as defined by our agreement with the City is March 15 through September 30. Our pricing reflects higher prices during peak season operations due to the increased demand and restricted resources at that time. It also reflects higher pricing at the higher demand time slots during the day. We price our tandems more competitively based on the 1:5 guide to boat ratio. The tandem is the most profitable option under those circumstances. **HBK does reserve the right to adjust prices based on discounted specials or market value fluctuations.*

Tour	Single Kayak Peak Season	Tandem Kayak Peak Season	Single Kayak Non-Peak Season	Tandem Kayak Non-Peak Season
Prime Time Sea Caves (10:30am -2:30pm)	\$ 66.00	\$ 88.00	\$ 55.00	\$ 77.00
Non-prime Sea Caves (9am and after 3pm)	\$ 55.00	\$ 77.00	\$ 55.00	\$ 77.00
Prime Time Kayak Snorkel (10:30am -2:30pm)	\$ 77.00	\$ 132.00	\$ 66.00	\$ 121.00
Non-prime Kayak Snorkel (9am and after 3pm)	\$ 66.00	\$ 121.00	\$ 66.00	\$ 121.00
Whale Watching Tour (Dec - Mar)	\$ 77.00	\$ 132.00	n/a	n/a
Kayak Rentals (1.5 hours)	\$ 50.00	\$ 70.00	\$ 40.00	\$ 60.00

Proposed Future Operations

This operating plan reflects operations for the first year of our new agreement beginning April 1, 2015 and continues until March 31, 2016.

Number of Kayaks used in operations – We maintain an inventory of 10 single kayaks and 30 tandem kayaks. This inventory is sufficient to service the tour slots and rentals that we have requested and rotations necessary to maintain the kayaks. We utilize on-site and off-site storage for our kayaks. All kayaks are in side our storefront or inside a storage facility.

Number of Customers per tour – Our tours are booked primarily using tandem kayaks and we maintain a 5:1 boat to guide ratio. When we receive notification from the life guards of a Hazard Alert 2 we switch to a 4:1 ratio. Typically, we use tandem kayaks, however, we do offer single kayaks in which case the number of people to guide is less than 10 (or 8 for Hazard Alert 2). There will never be more than 10 people per guide. Though we are allowed to have 10 boats on each slot, we break the tour into two smaller groups of 5 boats and a guide and they will follow different routes. The reserve is a very special area and we try to make as little impact on the environment and its inhabitants as is possible. HBK is a Leave No Trace Certified company.

Proposed Kayak tour Schedule

Proposed Tour Schedule

Group A Kayaks	Launch	Land
2 guide kayaks	9:00 AM	10:30 AM
10 customer kayaks	12:20 PM	1:50 PM
	2:20 PM	3:50 PM
	4:20 PM	5:50 PM

Group B Kayaks	Launch	Land
2 guide kayaks	10:20 AM	10:50 AM
10 customer kayaks	12:40 PM	2:10 PM
	2:40 PM	4:10 PM
	4:40 PM	6:10 PM

The schedules above assume the use of tandems on our tours. This is our primary objective as it maximizes revenue and minimizes the number of boats on the water.

This schedule allows for our kayaks to be utilized to their full potential with a 10 minute window in between tours. Though this is a tight schedule, we feel it is very possible given the staffing plan that we have created. Each shift only does 2 tours and there is a half hour break in between each tour. This keeps the guides engaged and not exhausted and they will be at the beach ready to launch as the previous tour beaches their kayaks. We do not allow a guide to do more than 2 tours in one day as we feel they become tired and safety could be at risk. We do plan on having additional beach duty and launching staff to accommodate this schedule and keep things running very organized and smoothly.

Proposed Kayak Rental Operations

HBK proposes to have 12 kayaks available for rental operations in La Jolla Shores – option A. The rental period is 1.5 hours. Rentals will only be available if we do not sell out our tours and will only be available at coinciding tour times. We will not be running extra kayaks to the beach for rentals. It is our understanding that the life guards will allow us to keep 24 kayaks at the beach (2 full tours requirement). It is our intention to take the 24 kayaks to the beach each morning and use just those kayaks throughout the day for tours and rentals. Therefore, the only available rentals will be unfilled tour spots. The maximum number of boats (both tours and rentals) that HBK will have on the water at any given time is 24.

Kayak renters are given a life vest and map of the area. Each individual renter is given a face to face 5 minute explanation of the area. They are made aware of the “off limits” areas which include: Devil’s slide, the caves, the Cove, the swim lane and the swim area in front of The Beach and Tennis Club and the swim area north of the launch. They are also made aware that if they take their kayak into the off limit areas that they may be cited by City lifeguards and fined by HBK. We also cover launching and landing at the boat launch only. Our beach personnel track and monitor the rental activity and ensure there are no more than 12 rentals on the water at any given time. All rental kayaks will be numbered and have a blue flag on them.

All rentals will be cancelled during Hazard Alert 2 and 3 and potentially during Hazard Alert 1 based on the determination of the on-duty lifeguard supervisor.

Kayak Concession Requirements: Operating Plan Related to Exhibit C

HBK prides itself on being one of the safest kayak tour operators in the industry. HBK has a lower volume of tours and rentals, and as such, can ensure our highly experienced guides can lead a higher proportion of tours and have more thorough training with new guides. Our guides have maintained a very positive relationship with the City of San Diego Lifeguards and our staff fully respects the decisions of the life guards regarding ocean and weather conditions and whether it is safe to kayak or not.

1) Ocean Conditions and Safety

It is part of HBK’s daily opening procedures to call the surf report hotline and look up surf and weather reports on Surflife and NOAA. We post the information on our front desk and information board at the front of our shop. We post the water temperature, wind

information, tides and surf information and both air and water visibility. We also post the lifeguard flag status:

- Hazard Alert 0 – Conditions normal – Green Flag
- Hazard Alert 1 – Conditions warrant additional safety measures. Rentals may or may not be allowed based on Lifeguard decision. Sea Caves may be closed to entry. – Yellow Flag
- Hazard Alert 2 – Conditions warrant additional safety measures. Rentals are NOT allowed. Guide to kayak ration is 1:4. Beach duty launch/retrieval staff is increased. Sea Caves are OFF Limits. – Yellow Flag
- Hazard Alert 3 – No commercial kayak operations allowed – Red Flag

We respect and will adhere to all lifeguard decisions without question.

We will update this same information in the afternoon or as conditions change. If our staff notices and potentially dangerous conditions arising (heavy fog, large swells, or high winds) we will visit the Lifeguard tower to solicit their input if they have not already communicated with us.

Each client is briefed on the inherent risk of kayaking and the daily conditions., We ensure each client knows that safety is our top priority and that the tour may be adjusted as needed to ensure a safe and enjoyable tour based on the current conditions and the dynamic conditions on the water.

2) Identifying Markers

HBK issues all guides and staff a company logoed T-shirt, rash guard, hooded sweatshirt and hat. This ensures our staff is wearing an article of clothing that represents HBK in all weather conditions and whether guiding a tour or loading equipment. All HBK kayak tour guides will have a unique guide PFD that also displays our logo.

Our kayaks are all marked with the letters “HBK” and followed by a number representing each individual kayak. These letters are visible from approximately 50 feet or more. All kayaks will have a flag attached to them to identify if they are a tour customer, renter or tour guide. Each flag will be attached to the stern of the kayak and the flag will be a minimum of 8”x11” and visible from the shore.

- Tour kayaks will have a green flag
- Rental kayaks will have a blue flag
- Tour guide kayaks will have a red flag

3) Concession Site Location

Our current store front is located at 2222 Avenida de la Playa which provides a very convenient location to conduct all financial and business transactions away from the boat launch. Our staff conducts all initial orientations and safety talks within our storefront. All instruction and additional safety talks are conducted in the area designated by the City of San Diego and Life guards.

4) Boat Launch/Operator Vehicles

We currently operate one truck that is 4WD (all-wheel drive). It is clearly marked with the letters HBK painted on both cab doors and the letters are plainly visible from 100 feet or more. Our registration and insurance are current and all drivers must have a valid California state driver's license. We also require that all employees go through a driver safety orientation before operating our vehicle. We recognize the high volume of foot traffic on the beach and on our local streets. We ensure each staff member makes safe driving in the area a top priority. We follow all rules for operating our truck within the boat launch, including following signs posted by the City and driving in the proper direction at minimal speeds. We always come to a complete stop prior to entering the boat launch and use a spotter (not in the vehicle, but on the beach) at all times when driving our truck on the boat launch. The spotter is responsible for monitoring and making sure there is a safe path for the vehicle.

We understand that the boat launch area must be kept clear at all times and that kayaks must not be left in a position that obstructs free use of the launch area. Our beach duty crew is responsible for ensuring that our boats are in the proper location at all times.

We obey all posted signs, curb markings and direction given by the City. We sweep the sand left from our truck at the beginning and end of every day.

Our truck will be parked in our garage in our building each night.

5) Concession Site - Regulations

All outfitting and rigging of kayaks will be done on dry land at a site specified by the City. We will also provide our customers the necessary kayak paddling instruction in the area designated by the City. We will keep only the permitted number of kayaks and paddles on the beach, however, we would hope that the City determines that number to be sufficient for 2 tours (24 kayaks) so that we can limit our beach runs to 2 in the morning and 2 in the evening. Allowing us to keep 24 kayaks on the boat launch will eliminate the need to make additional trips during the day and we will be able to re-park our vehicle in the garage and leave it there until it is time to pick up the kayaks at the end of the day. We would appreciate the City assigning space for each concessionaire against the seawall as they have done in the past, this was very efficient and helpful for all.

We do have a great paddle rack that keeps the paddles neat and orderly while stored on the beach.

We understand there is a 15 minute period for drop off and pick up of kayaks and will adhere to that time frame. We will always keep the launch clear. We also adhere to all of the laws rules and guidelines for traffic at the launch and adjacent streets – this includes speed, staging, parking, and traffic flow. The safety of the public is our main concern and we will always conduct ourselves and operations in a manner that exercises extreme care and caution for the safety of those around us.

6) Maximum number of tour participants/Student to guide (instructor) ratio

HBK kayak tours will never exceed 12 kayaks total including a maximum of 10 customer kayaks and 2 guide kayaks. Each tour has a maximum ratio of 1 guide to 5 customer kayaks. There will be a maximum of 20 guests per tour. We do break our 10 boat tours in to two small groups of 5:1. In the case of a Hazard Alert 2 the ratio will be 1 guide to 4 customer kayaks.

7) Water Activity Zones and Areas of Special Interest

According to §63.20.2 San Diego Municipal Code the established water activity zones are:

- SWIMMING ZONE
- BOARD SURFING ZONE
- CONTROL ZONE
- NO BOARD SURFING ZONE
- CLOSED ZONE
- BOAT LAUNCH ZONE

HBK is well versed on the different water activity zones and conduct our tours only in those areas where permitted to do so. We will ensure that every renter is also aware of these water activity zones, both by verbal and visual and by giving them a map. We will also verbally make each rental customer aware of Municipal code §63.20.9:

- No boat or vessel, excepting inflatable boats which are not propelled by machinery, may be launched or retrieved from any beach area in the City except in a designated boat beaching area or boat launch zone.

Further, HBK will verbally and visually instruct all kayak rentals on where they can and cannot kayak in the reserve. We tell all renters to stay clear of the rocky shore lines and caves and to stay out of all swim lanes. This information is clearly lined out on our rental form (included with this proposal in the last section - Misc.) that requires that the renter

acknowledge and sign with their agreement. HBK notifies the customer that they may be issued a citation from City or pay a fine charged by HBK if they do not follow the strict rules and regulations for renting kayaks.

8) Equipment

In addition to the experience and good judgment of our guides, HBK recognizes the need for proper equipment use as a pillar of safety in our operations. HBK's operation manager inspects each kayak before being dropped off on the beach and all guides are trained to identify potential problems before use. Kayaks will not be deposited on the beach prior to 8 am and will be removed before dark. HBK will have at least one person on staff at the beach at all times when we have equipment on the beach. That employee is also responsible to keep all equipment in a neat and orderly manner. All of our equipment will be stored so as not to impede any other activities within the boat launch area. HBK will store all equipment in the area assigned by the City and Lifeguards.

Each guide is equipped and trained to use :

- U.S .Coastguard approved visual and auditory signaling device (orange distress flag and whistles)
- Water proof cell phones
- Tow ropes
- First aid kit
- Whitewater kayaking helmet
- US Coastguard approved, properly fitted type V PFD
- Fins

Each Client is equipped with:

- Whitewater kayaking helmet
- US Coast Guard approved, properly fitted, type III PFD.
- Wet suit if needed

9) Waivers

All clients on HBK tours and individual kayak rentals must sign a liability waiver or have a legal guardian sign a waiver for them if they are under 18 years old. This waiver 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 this agreement. *see Section 10 – Misc. for a sample of the HBK waiver and Rental Agreement

10) Safety Precautions/Emergency Response Plan

At the start of any tour or rental transaction, each customer fills out a waiver that captures their full name, local or cell contact number, kayak id# to aid in locating the customer in the event of an emergency. Each renter is provided with a water proof map that has land marks, clearly noted swim areas, off limit rocky shorelines, off limit cave areas, and the boat launch. The map clearly indicates all Water Activity Zone Areas.

HBK provides each renter with a detailed explanation of the map and all of the Water Zone Activity Areas, Off limits areas and hazards. For their safety and the safety of others we do make it very clear that any deviation from the allowed areas can result in injuries, citations from the City and fines from HBK. Customers are made aware that HBK has safety specialists at the boat launch and on the water to ensure compliance. Those safety specialists are the boat launch managers and tour guides on the water.

HBK reserves the right to deny rentals to any customer that we do not believe is capable of safely operating the vessel. We do require that all renters have previous kayaking experience in order to rent a kayak. Those customers that do not have previous experience will be offered a seat on our tour with a “first timer’s” discount.

HBK provides every renter with at Type III U.S. Coast Guard approved life vest.

Any injury that requires medical attention or services during rental or tour operations is communicated to the SD Fire-Rescue Lifeguards in writing. A written injury report is kept on file for at least 3 years after each incident.

*See section 8 – Emergency Response Plan

11) Minimum Requirements for Guides

All guides are 18 years of age or older will maintain at least the minimum requirements/qualifications set for the by the City of San Diego. HBK will ensure that all of these qualifications, certifications and requirements are current and that a current certificate is on file in our offices.

- A valid Basic First Aid certification from the American Red Cross or 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.
- A certificate of completion for the Lifeguard Division Kayak Guide Orientation Training.

- A certificate of completion if HBK guide training. This certification is required annually for all guides. The content of the training is updated and contained in the Operating Plan that is submitted to the City each year.

*All guides must have First Aid and CPR certification in order to be hired. The remainder of the training is done on site at HBK ad with the Lifeguards at the beach and on the water

Our more experienced guides also possess additional certifications including:

- Wilderness First Responder
- Wilderness Advanced First Aid
- Open Water Life Guard
- Leave No Trace Foundation Master Educator
- Advanced Sea Kayaking
- Cal Safe Boating

HBK's guide Training includes (at a minimum) the following:

- Review of the La Jolla Coastal Geography
- Review of the Kayak Concession Requirements (Schedule C)
- Weather and Surf conditions
- Hazards: Large surf, wind, location of local caves and cliffs.
- Emergency Action/Response Plan
- Flotation Devices and emergency signaling devices
- Instructing others on the topics of kayak paddling and maneuvering skills
- Local rules and laws pertaining to the Water Activity Zones
- Laws pertaining to the La Jolla Ecological Reserve
- Signs and Symptoms of Hypothermia
- Types of different local marine life
- Review of general Lifeguard Operations
- Proper use of marine band VHF radios and cell phones
- Applicable Federal and state laws and regulations for vessel operations

*Please see HBK Staff Training plan for more detailed information regarding training. The Staff Training Manual is located at our shop in our materials library and available for inspection at any time.

All guides are extremely well suited to supervise and instruct clients and are capable of giving a suitable orientation talk to all clients while in kayaks on relevant subjects which

include, but are not limited to: overall safety, personal floatation devices, emergency signaling devices, and kayak paddling/maneuvering skills. Guides possess a general knowledge of the emergency access and evacuation routes and how to summon and assist emergency response personnel.

HBK understands and fully agrees that keeping customers safe while engaged in kayak tours and rentals is our highest priority. Further, we understand that Violation notices may be issued if we are found to be violating our concession agreement.

HBK will have all items related to the concession agreement and schedule C available for inspection at any time at our location at 2222 Avenida de la Playa in La Jolla Shores. We will have all certifications for guides, written injury reports, kayak rental/tour customer information, waivers, tour schedules and safety information available.

HBK acknowledges that the City of any officer with authority to enforce local, state and federal law has the right to terminate any tour or rental if there is a safety violation.

HBK will have valid licenses and permits to do business within San Diego at all times. HBK has a store front at 2222 Avenida de la Playa and will not conduct any business or solicit business on City property. All business transactions will be conducted within our storefront address.

HBK Staff Training Plan:

Safety is and will continue to be HBK's number one priority and our staff training reflects this philosophy. The best way to ensure each tour is led by a highly experienced guide is to retain our most senior guides. HBK has a low attrition rate and high experience rate and therefore we maintain a high level of safety and quality throughout our operations.

We do hire seasonal guides to help in the summer months so we have established a very thorough training plan that is rigid enough to ensure all necessary skills, protocols, and use of equipment is covered, but flexible enough to address the needs of each individual employee. The HBK leadership team recognizes the importance of training each guide individually, thoroughly, and on an ongoing basis.

The senior experienced guides each play a role in training a new employee and the entire process is overseen by the owners. Guides are trained in all aspects of our operations to ensure they understand and can assist in the efficient function from check-in to check-out. This also ensures guides understand all permit rules and organizational procedures and can identify potential violations before they occur.

HBK's New Employee Training Checklist completed by all incoming guides. Check list followed by a detailed narrative of HBK's 4 phase training plan:

- Company Policies
 - Attendance, Punctuality, Uniform, Time and Compensation
 - Drug Free Work Place
 - Americans with Disabilities Act
 - Harassment Free Work Place
- Review the current City of San Diego Kayak Concessioners Permit requirements
 - Rules and Requirements Set in Section C
 - Boat Launch map created by Lifeguards (indicating route, storage, through ways)
 - Emergency signals, whistles and cell phone
- Client Check in Procedures
 - Storefront procedures – waivers and customer information
 - Personal belonging storage
 - Proper kayaking attire
- Surf and Weather Conditions
 - San Diego Lifeguard Surf Report
 - Surfline
 - NOAA
- Client Equipment Fitting
 - Type III PFDs
 - White water kayak helmets
 - Wetsuits
 - Fins
 - Kayak and Paddle sizing
- Guide Equipment and proper use
 - Type V PFDs
 - White water kayak helmet
 - Swim fins
 - Communication devices
 - Water proof cell phones – proper emergency phone numbers
 - Marine Band VHL radios – proper emergency channels
 - Dry Bag
 - Tow Ropes
 - Visual and Auditory Devices
 - Waterproof flares
 - Mirror
 - Hand Signals
 - Flags
 - Whistle
- Vehicle Safety and Operation

- Proper kayak loading
- Street traffic and neighborhood relations
- Boat Launch rules and regulations
 - Boat Launch traffic flow
 - Backing up
 - Unloading kayaks
 - Spotter
- Mitigating foot traffic from clients in the local neighborhood
- Kayak Storage
 - Roles of Beach Manager and Kayak Launch staff
 - Proper kayak and paddle storage and designated storage locations
 - Loading time limits
 - Hours of boat launch storage
 - Kayak Flags and boat numbers
 - Through ways and emergency lanes
- Kayaking Skills and Orientation
 - Forward stroke
 - Back Stroke
 - Basic maneuvering
 - Maneuvering in tight spaces
 - Draw strokes
 - Kayak entry
 - Surf zone launching
 - On water kayak re-entry
 - Kayak rescues
 - Surf zone beaching
- Ocean Conditions/La Jolla Coastal Geography
 - Local wind patterns
 - Santa Anna winds
 - Surf Zone Dynamics
 - Wind Swell
 - Ground Swell
 - Currents
 - Long Shore
 - Rip Currents
 - Swell Direction
 - Swell Period and Intervals
 - Wave Formation and Tides
 - Coastal Geography
 - Topography and substrate
 - Coastline directional orientation and associated wave impacts

- La Jolla Shores
 - La Jolla Rock and Reef
 - Devil's Slide
 - Eastern Caves
 - Western Caves
 - Entering Arches Cave
 - Entering the Clam Cave
 - Kelp forest dynamics and paddling techniques
- Temperature
 - Extreme Heat
 - Extreme Cold
 - Symptoms and Procedures for Hypothermia
 - Symptoms and Procedures for heat exhaustion
- Other Known Hazards
 - Rocks/shells
 - Shell fish fouling areas
 - Jelly Fish
 - Sting Rays
 - Bee stings
- Boating/Local Area Rules and Regulations
 - Federal and state boating regulations
 - Cal Safe Boating Literature and DVD
 - Municipal code §63.20.9:
 - Local Water Activity Zones §63.20.2 San Diego Municipal Code
 - La Jolla Cove Swim Lane
 - Beach Club swim lane
 - Swim area north adjacent to boat launch
 - No Float Zones
 - La Jolla Shores Swim and Surf areas
 - La Jolla Shores Boat Launch
 - Safety Procedures, Rules and Regulations
 - La Jolla Ecological Reserve
 - Marine Mammal Protection Act
- Capsizing and rescues
 - Capsize conditions and locations
- Emergency Response Plan
 - General Lifeguard Operations
 - Initial Scene Survey
 - When to initiate Emergency response plan
 - Rescuer, Guide, and Client Safety

- Proper Emergency Notification
- Initial Assessment
 - Non- emergency – all clear
 - Cardiovascular, Nervous, and Respiratory System Emergencies
 - Immediate Response
- Potential Emergencies
 - Hypothermia
 - Heat Trauma
 - Dehydration
 - Blunt Force and Head/Spinal Trauma
 - Injuries from Wildlife
 - Lacerations, Puncture Wounds, and Scrapes
 - Stable and Unstable Extremity Injuries
 - Diabetes
 - Allergies

On the Water Training Plan

Phase 1: Local Knowledge and Kayak Skills

HBK's training schedule for new guides is maxed at three new guides per training session with our operations manager. The training begins with a walk around the La Jolla Ecological Reserve including a walk above the La Jolla Sea Caves and a drive to the top of Mt. Soledad. This gives our operations manager a chance to teach the incoming guides about the local shoreline, coastal geography, shore line directional orientation, ocean dynamics and weather patterns.

This is followed by a 5 hour kayak trip to introduce the kayak tour components, discuss how the local knowledge of the area affects kayaking operations and to practice surf skills. We begin with a thorough discussion of surf zone dynamics and proper surf launching technique. We then launch and teach basic kayak strokes, bracing, turning, pivot turning, and practice capsizing and different rescue/re-entries. We return to the surf zone for beaching and launching in the surf zone and repeat practicing launching each other.

We then paddle south along La Jolla Shores discussing wave dynamics in the leopard shark viewing area, along the rock and reef, and through Devil's slide. We discuss the designated Water Activity Zones and the buoys that mark the areas throughout the training. We then make our way to the caves and talk at length about waves in the area, rock formations, swell size, and direction and potential trouble situations in the area. We discuss proper conditions required to enter Arches and the Clam. We also discuss how to let customers know that we will not be

entering the caves and how to handle upset customers. If conditions are ok, we will enter the caves and practice getting in and out of the kayak in the clam cave. We practice rescue situations with each other in and around the caves. We also practice the proper technique for swimming kayaks into the caves along with the risks and benefits of this technique. We always ensure each guide knows that the caves are not always safe and client safety comes far before entering the caves. During all rescue situations we practice group control, proper notification of emergency services and roles for guides in each scenario.

We then paddle out to the kelp forest. We practice paddling techniques for kelp beds and make our way to the open ocean. Here we talk about wind patterns and Santa Anna conditions. We practice using towing equipment and conduct practice towing. We make our way back to the boat launch and conclude with one final lap to discuss tour content.

Phase 2: Certifications/Shadowing Lead Guides/ Paddle Instruction/Safety Orientation

The second component of HBK's training schedule is to obtain all necessary certifications along with shadowing tours lead by senior guides and the operations manager. (First aid and CPR certifications are required prior to hiring. Lifeguard and HBK training are referenced here). Incoming guides are slowly given the opportunities to conduct safety talks, paddle instructions, and educational stops supplemented by senior guides. There is no maximum number of tours that must be shadowed before leading a tour solo, but rather each guide is evaluated on an individual basis and begins leading tours when the operations manager deems them to be ready. The minimum number of shadow tours that must be completed is four.

Phase 3: Being Shadowed and Evaluated

As the incoming guides transition to more and more responsibility, they will eventually take out their own tours while being shadowed by other senior guides and the operations manager. Each tour will be followed by an informal evaluation and discussion of strong points and areas for improvement. A guide will be shadowed a minimum of four times by senior guides or the operations manager.

Phase 4: Final Skill Testing

As a final part of the training process each guide will join the operations manager for a final practice tour and run through possible emergency scenarios and rescue procedures, but this point it is the operations manager creating scenarios and evaluating how the guide responds. This is wrapped up by a discussion of the guides responses, areas to improve and strengths to build on. At this point we trust the incoming guide to lead their own tours, but they will continue to assist more senior guides when more than one guide is needed.

Evaluation Procedure: On a semi-annual basis HBK's operations manager conducts an employee/guide review. The review process entails:

- Accompanying each guide on a tour to review content and safety procedures.
- A review of the permit requirements and operation protocols
- Written evaluation of performance – both employee and manager
- One on one meeting to discuss goals, strengths and areas for growth/improvement
- If necessary a follow up meeting is scheduled for 6 weeks out.

12) Violations/Safety Notices

HBK understands and fully agrees that keeping customers safe while engaged in kayak tours and rentals is our highest priority. Further, we understand that Violation notices may be issued if we are found to be violating our concession agreement.

HBK will have all items related to the concession agreement and schedule C available for inspection at any time at our location at 2222 Avenida de la Playa in La Jolla Shores. We will have all certifications for guides, written injury reports, kayak rental/tour customer information, waivers, tour schedules and safety information available.

HBK acknowledges that the City of any officer with authority to enforce local, state and federal law has the right to terminate any tour or rental if there is a safety violation.

13) Additional Concession Stipulations

HBK will have valid licenses and permits to do business within San Diego at all times. HBK has a store front at 2222 Avenida de la Playa and will not conduct any business or solicit business on City property. All business transactions will be conducted within our storefront address.

Tour Description and Information

La Jolla Sea Caves and Marine Ecological Reserve Kayak Tour

Overview of Tour and Equipment Outfitting

We begin our tour in our shop with a quick welcome to the community, get waivers signed, and process the customer's payment or verify that it has been paid on line. We then outfit each guest with safety equipment including a USCG approved PFD, a helmet certified to the CE EN 1385 Water Sport Safety Standard, and an appropriate wetsuit, if necessary. Our guides also instruct guests with a lesson on proper fit and use of this equipment.

Kayaking, Safety Instruction, Launching

Our guests leave our shop and walk with a guide down Vallecitos toward the comfort station at Kellogg park. We then proceed to the La Jolla Shores boat launch. The guide hands out paddles and then directs the customers to the designated area of the beach set by the City of San Diego and Lifeguards. Our instruction begins with an over view of the current weather and ocean conditions (discussion topics could include: onshore wind, off shore wind/Santa Ana conditions, surf, tides, water temperature, wind swell, ground swell, benthic substrate, heat/chill, algae blooms, water quality, hazardous wildlife – all based on current conditions and relevance). Tours will be cancelled if any of these conditions are unsafe or if the Lifeguards have issued a Hazard Alert 3. We continue the instruction with basic kayaking techniques including forward paddle, back paddle, bracing, turns, launching, surf zone dynamics and safety, sting ray awareness, and respect of other recreational ocean users. We then launch the customers and stay with each boat until we feel the customer has made it through the surf and is able to safely make it to the meet up spot. In the case of Hazard Alert 2 the launching staff is increased to help with this process. At this time, the guides will make initial decisions about a customer's ability to continue on the trip based on their ability, fitness, balance and other factors. If a guide does not think a customer can safely continue the tour they will send the customers back to the shop for a rain check or store credit. We will not risk the safety of the group trying to accommodate all customers. Kayaking is not for everyone and we can offer many other options for these customers.

Group Formation and Introduction to the Area

After our thorough safety lesson and launch we instruct the customers to meet at a designated buoy or with a guide already on the water. They stay here until the entire group and all guides are present. Here the guide stresses the importance of staying together as a group, listening to instruction and position the boats to avoid surf and other kayakers. We will also take a moment to adjust equipment at this time.

Our guide presents an over view pf the La Jolla Ecological Reserve as a biodiversity hot spot that requires conservation and protection. The various ecosystems and climates are discussed including the La Jolla and Scripps Canyons, the rock reefs, sandy plateau, and kelp forest. The guide also explains how this unique environment supports an incredible amount of wildlife and the means of protection that the reserve provides. The diverse ecosystems and species density are a major theme of our tour, in addition to the conservation opportunities that exist for individual citizens. Our guides provide an excellent presentation that breaks down complex marine ecological processes into models that all guests and residents alike can appreciate. This style allows for a true appreciation and wonder of the incredible natural resources in our area. It is important to note that throughout the tour our guides adhere to all of the minimum impact principles of outdoor recreation set by the Leave-No-Trace Organization and also all rules and regulations of the Marine Mammal Protection Act. We discuss those principles and regulations with our guests so that can have a full understanding and appreciation of why these standards and regulations exist.

Sandy Plateau

The sandy shelf that sits between Scripps and the La Jolla Canyons offers a critical habitat for many species. On the days with quality conditions, our guides show how many species use this area to thrive. Guides show the guests the sand dollar beds and discuss how the environmental conditions support their feeding and the roles they play in the larger ecosystem. We also paddle over the leopard shark breeding, gestation and birthing, and feeding habitats. This opportunity also provides a teachable moment to discuss the harmless nature of sharks in general and the role that illogical human fears contribute to the limited conservation of sharks worldwide. We also commonly observe bat rays, shovel nose guitar fish and our guides discuss the unique adaptations these creatures utilize to live in this marine environment.

The Rock Reefs

During our paddle from the La Jolla Shores to the sea caves, we cross over the rocky reefs and we provide information on the vegetation and kelp that inhabit these reefs and the unique characteristics that define their niche and ranges. We also discuss other wildlife we view in this ecosystem including: the garibaldi fish, opal eye, black sea turtles, spiny rock lobsters, and others.

The La Jolla Sea Caves

This section of the tour is perhaps the pinnacle of the area. On addition to the adventure of paddling through the caves, the area provides a supreme area for viewing aquatic and terrestrial wildlife. Our guides include a thorough talk on the geology of the cave and how the forces of nature typical in Southern California like large waves, erosion and plate tectonics combine to create these unique formations. We also discuss the cultural history of the area and how early inhabitants, Kumeyaay, used the area to sustain their tribes and how more modern

residents use the area for various recreation and economic gain. Primarily, our guides provide insight into the unique wildlife and their behavior. We discuss the Brandt's Cormorant's diving ability and corresponding adaptations of its body structure and behavior. The plight of the Brown Pelican is a common topic of discussion and we explore how science, research and management have allowed this beautiful bird to flourish after the population was devastated by the pesticide DDT. The California Sea Lions are always a popular aspect of the tour and our guides provide valuable insight into the incredible diving and fishing abilities and their unique characteristics and identification of the animal. Often times in calm conditions, we are able to identify the various shellfish and limpets living on the rock face. It is important to note that all of our guides are highly trained in oceanic conditions and utilize a thorough understanding of swell and ocean bottom dynamics to ensure a safe tour while near or, if safe, inside the caves. If conditions permit we will take our customers in the Clam cave on a case by case basis. We typically will swim the kayaks in the caves. If the Lifeguards have issued a Hazard Alert 2 we will not enter the sea caves and will stay a safe distance from the rocky shore line.

The kelp Forest and La Jolla Canyon

The kelp beds naturally fascinate our guests and our guides facilitate an understanding and awe of these magnificent algae. We discuss the incredible growth rate, the commercial applications and uses, and most importantly, the vast level of biodiversity that inhabit these forests and decrease the size of the total kelp forest area in Southern California. We also discuss the deep canyons that ultimately define our reserve and observe the pelagic marine life that travels relatively close to shore. We very frequently use this opportunity to discuss environmental issues of our region and what guests can do locally and away to increase conservation and preservation levels.

- We make guests aware of urban runoff issue and what they can do to combat the problem
- We explore how they can shop and consume seafood in a sustainable way
- We talk about how climate change will affect our region and various publications they can explore for tips on curbing greenhouse gases.
- We inform the guests about the existence of the trash vortexes that exist in the North Pacific Ocean. The patch is characterized by high concentrations of suspended plastic and other debris that have been trapped by the current of the North Pacific Gyre.
- We mention our mantra of Reduce, Reuse, & Recycle
- We also discuss conservation organizations that we support
- We are an eco-adventure company and all of our tours are based on preserving our environments, conserving our resources, and reinforcing sustainable practices.

Hike Bike Kayak has received the Coastkeeper Coastal Champion Award for Marine Preservation and also the ASBS (Area of Special Biological Significance) Special Recognition award. "Hike Bike Kayak received these awards for building a tourism business that combines recreational activity with education about San Diego's unique marine ecosystems. Hike Bike Kayak also received the ASBS Special Recognition for its contribution to protecting one of the most pristine and biologically unique coastal areas in our State."

When visiting the Kelp beds HBK is sure to go around the outer limits of the swim lane when it is in place.

Our tour lasts one and a half hours and we end the tour by re-grouping at the same buoy that we started so that we can give the customers information on a safe surf landing. We go over the lane to stay in when surfing in, how to avoid oncoming kayakers and swim lanes, and what to do if they capsize.

La Jolla Sea Caves and Marine Ecological Reserve Kayak and Snorkel Tour

Our Kayak and snorkel tour essentially visits the same areas as the kayak tour and goes over the same information. The major difference is that this tour is that we make less frequent and shorter stops and spend 20-30 minutes snorkeling at the caves. Depending on the conditions, we securely anchor our kayaks and snorkel in and around the sea caves. If conditions are poor at the caves we may snorkel out in the kelp forest. By experiencing the reserve above and below the water's surface, we find these tours to be amazingly effective in helping the guest fully develop an appreciation of the ecological reserve and marine mammals and fish. The whole tour is 2 hours long (1.5 hours kayaking and snorkeling and .5 hours just snorkeling).

EXHIBIT C

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") shall maintain continual adherence to all terms and conditions included herein and all applicable laws and shall take 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 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 shall 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 are increased (one guide for every four kayak tour boats) and launching/retrieving staff is increased. 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.

- Every kayak 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 kayaks involved in a tour shall have a green flag.
- 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 shall 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 of the 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 shall 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:

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 shall 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 shall advise individual kayak rentals to remain outside of the swim lane at La Jolla Cove.

Concessionaires shall 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 and sea lions. 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. Concessionaires shall 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 codes applicable in the State of California by Concessionaires or individuals may result in the issuance of citations.

8. Equipment:

Concessionaire shall 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 shall also ensure that all individuals 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 shall maintain all kayaks and operational equipment in proper working order and condition.

Concessionaire shall 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 is 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 shall 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 inform the SD Fire-Rescue Lifeguards in writing of such injury.

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

11. Minimum Requirements for Guides

Concessionaire shall 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 not limited to, overall safety, personal flotation devices, emergency signaling devices, 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.

When 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.