



CITY OF SAN DIEGO
REAL ESTATE ASSETS DEPARTMENT
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4195

REQUEST FOR PROPOSALS
(COVER SHEET)

Solicitation Type: Operation of Kayak Concessions at La Jolla Shores, San Diego, CA

Solicitation Number: 1119192020

Solicitation Issue Date: November 19, 2019

Proposal Due Date and Time (Closing Date): January 13, 2020 at 4:00 p.m. P.S.T.

City Contact: Jayne Vanderhagen, Supervising Property Agent
Phone: (619) 236-6210
Email: jvanderhagen@sanidiego.gov

Pre-Proposal Meeting: December 5, 2019 at 2 p.m. located at Lifeguard Headquarters, 2581 Quivera Court, San Diego, Ca 92109. If you plan to attend, RSVP via email. This meeting is not required. Due to limited space, we request only one person per Proposer to attend.

Questions and Comments Due: December 11, 2019 at 4:00 p.m. P.S.T.

Duration of Offer: By submitting a proposal, the proposer guarantees that the offer is firm for ninety (90) calendar days commencing the day following the Closing Date. Proposer agrees to accept a resulting contract subject to the terms and conditions stated herein. If an award is not made during that period, proposer's offer shall automatically extend for another ninety (90) calendar days unless the proposer indicates otherwise in writing to the City Contact thirty (30) calendar days prior to the end of the first ninety (90) calendar day period.

Proposer _____
Street Address _____
City _____
Telephone No _____
E-Mail _____

PROPOSER'S AUTHORIZED REPRESENTATIVE. Proposer is required to sign this document and return four (4) original hard copy proposals (one unbound and three bound) and an electronic copy of their proposal on an USB flash-drive in sealed envelopes or cartons to the City Contact.

Proposer agrees to furnish and deliver all goods and/or provide all services set forth or otherwise identified above subject to the terms and conditions specified herein.

An original signature below is required. If a proposal is being submitted by more than one entity/individual, each entity/individual must sign and submit this page separately along with the proposal. By signing below, the signer declares under penalty of perjury that she/he is authorized to submit and sign this proposal.

Signature of Proposer's Authorized Representative

Print Name

Title

Signature

Date

INTRODUCTION

The City of San Diego (“City”) is requesting proposals from qualified organizations or individuals (individually referred to as “Proposer”) to operate kayak concessions (“Concessions”) at La Jolla Shores public boat launch ramp (Site) as shown on **Exhibit A: Site Map**. The public boat launch ramp at La Jolla Shores is currently used by commercial kayak operators approved by the City. The kayak concessions launch from the sand near the boat launch and paddle out into the ocean just beyond the surf line. The City is seeking proposals that reflect the City’s desire to have an operator(s) who will provide a high level of service to the local and regional community, while operating the Concessions in a fiscally responsible manner. It is of the utmost importance to the City to have continuity in the operation of the Concession. It is the City’s desire that Concessions continue to operate with minimal, if any, interruption in service to the regional community. The Concessions shall be in accordance with the terms and conditions contained in this Request for Proposals (“RFP”), and, if awarded, pursuant to a concession agreement (“Agreement” or “Concession Agreement”) to be negotiated between the City and the Proposer whose proposal(s) are selected (“selected Proposer”), subject to approval by the City.

A. BACKGROUND AND DESCRIPTION OF OPERATIONS

The current commercial kayak operators are utilizing the La Jolla Shores public boat launch ramp (Site) under short-term concession agreements issued by the City in 2015. The terms of these concession permits will expire on March 31, 2020. The boat launch ramp is also used by small boat owners, sport fishermen, and individual kayakers for personal recreational use.

The purpose of this RFP is to select qualified Proposer(s) who will operate Concessions at La Jolla Shores beginning on April 1, 2020 for a three-year period, with two one-year extensions. A concession agreement (“Agreement”) will be executed with each of the selected Proposer(s) for a three-year period, with two one-year extensions.

The intention of this RFP is to reasonably ensure water safety during kayak operations, preserve and maintain the marine natural environment to the extent reasonably possible, and to mitigate and relieve congestion at the boat launch ramp as well as vehicle and pedestrian congestion on Avenida de la Playa.

To ensure a safe and pleasant environment for residents and tourists, kayak operations during the peak season (from March 15th through September 30th of each year) will be limited in size and number for the term of the concession. The CITY may periodically adjust the size and number of the kayak tours, individual kayak rentals, and other aspects of the operation or Concessions during the course of the Agreement, at any time of the year and at the City’s sole discretion. The City will provide thirty (30) days’ advanced written notice to the selected Proposer(s) for all non-safety related adjustments to Concessions.

1. Primary and Secondary Time/Tour Slots

- a. There are a total of fifty-four (54) Primary time slots and twenty-seven (27) Secondary time slots available per day, as shown in **Exhibit B-1: Primary Kayak Tour Schedule and Exhibit B-2: Secondary Tour Schedule**, attached hereto. The use of the boat launch ramp and application of the tour schedule shall be in accordance with the terms and conditions contained in this RFP, and, if awarded, pursuant to an Agreement to be completed between the City and the Proposer whose proposal is selected ("Selected Proposer"). The agreement term shall be thirty-six (36) months with two (2) one-year extensions ("Term"). The City reserves the right to terminate or change for any reason the use of the Site upon thirty (30) days written notice.
- b. A **Primary Tour Schedule (Exhibit B-1)** has been developed to distribute available tour slots during the peak season to selected Proposer(s). The Primary Tour Schedule identifies fifty-four (54) primary tours per day to be distributed among selected Proposer(s). Each tour shall launch and return to the La Jolla Shores boat launch ramp at the designated times set forth in the Primary Tour Schedule. Selected Proposer(s) are not permitted to launch two or more tours at the same time. No kayak operations of any kind are allowed on July 4th of each year.
- c. The number of slots awarded to each of the selected Proposer(s) will be based upon a number of factors including but not limited to: (1) the rank order of the Proposer(s)' response to the RFP; (2) the number of slots requested in the Proposer(s)' operating plan; and (3) Proposer(s)' past kayak tour operations (if any) or equivalent experience. Proposer(s) must meet or exceed minimum criteria in the RFP to be considered eligible for selection.

The Primary Tour Schedule (Exhibit B-1) is attached. The City will allocate time slots to each selected Proposer. The schedule will be built to maximize efficiency and safety, and minimize impacts on the community. Specifically, selected Proposers will be required to "recycle" kayaks from subsequent tours to minimize the total number of kayaks needed.

For example, if a selected company is awarded a permit with eight (8) tour time slots, a sample schedule may look like this:

Launch Time	Launch Time	Launch Time	Launch Time
0900	1120	1340	1600
0920	1140	1400	1620
0940	1200	1420	1640
1000	1220	1440	1700
1020	1240	1500	1720

1040	1300	1520	1740
1100	1320	1540	

The color-coded time slots are designed to use the same twelve kayaks. The kayaks used for the 0900 tour highlighted in blue will be utilized again at 1100. In this example, twenty-four (24) kayaks are needed to run these eight (8) kayak tours. Additionally, two truck kayak deliveries and two truck kayak retrievals are required. This is designed to reduce vehicle traffic and minimize congestion in the community and at the boat launch.

2. **Kayak Rentals:** The City's Lifeguard Services and Park and Recreation Department are routinely monitoring use of the public boat launch, the waters of the Pacific Ocean, and pedestrian use of adjacent City property. The City's goal is to minimize safety concerns at all of these locations. During the peak season, selected Proposer(s) will be permitted to rent out no more than twelve (12) individual kayaks at any one time.
3. **Options:** The City is providing selected Proposer(s) the option to decrease the number of individual Kayak Rentals in lieu of an increased number of launch times. These "Secondary" launch times would be in addition to the allocation of "Primary" launch times. Selected Proposer(s) will have four (4) options to choose from and should identify which option they intend to use in their submitted Operating Plan. The identified option will remain in effect for the duration of the Concession Agreement. The options are as follows:

Option A:

Twelve (12) Individual Kayak Rentals and Zero (0) Secondary Launch Times.

Option B:

Eight (8) Individual Kayak Rentals and One (1) Secondary Launch Time.

Option C:

Four (4) Individual Kayak Rentals and Two (2) Secondary Launch Times.

Option D:

Zero (0) Individual Kayak Rentals and Three (3) Secondary Launch Times.

- a. A **Secondary Tour Schedule (Exhibit B-2)** has been developed to distribute available secondary tour slots during the peak season to selected Proposer(s). The Secondary Tour Schedule identifies twenty-seven (27) secondary tour launch times per day that could be distributed among selected Proposer(s) that choose Option B, C, or D. Each tour shall launch and return to the La Jolla Shores boat launch ramp at the respective designated times as set forth in the tour schedule. Selected Proposer(s) are not permitted to launch two

or more tours at the same time. No kayak operations of any kind are allowed on July 4th of each year.

Based on each selected Proposer(s) Operating Plan, Primary Tour Schedule, and identified individual Kayak Rental option, the City will allocate specific secondary time slots. The tour schedule will be built to maximize efficiency and safety, and minimize any negative impacts on the community.

- b. The City reserves the right to make changes to the Tour Schedule(s) and/or the number of individual kayak rentals based on operational and safety considerations. Such changes could happen at any time or during any season and will be entirely at the City's discretion (for example, the City may limit the number of tours on off-season weekends). The City will be providing continuous and ongoing quality control and will review the Tour Schedules at the end of each peak season during the term of each Agreement and review it with the selected Proposer(s). Based on the results of any such review, the City may in its sole discretion make any changes to Concession-related operations it deems necessary. The City will provide thirty (30) days' advanced written notice to the selected Proposer(s) for all non-safety related changes to Concessions.
- c. Each Proposer will review the **Kayak Concession Requirements, attached as Exhibit C**, which contain important additional operational requirements. The submission of a proposal in response to this RFP will be deemed a complete understanding and agreement on the part of the Proposer to all of the terms and conditions of the Kayak Concession Requirements unless otherwise stated in writing in the submitted proposal.
- d. Should any launch times become vacant throughout this RFP process or during the term of the Concession Agreements, the City may distribute those vacant launch times among other winning Proposers at its discretion.

4. Maximum Days and Hours of Operation.

No kayak tour or rental operations are permitted prior to 8:00 a.m. daily. Kayaks must not be deposited at the boat launch prior to 8:00 a.m. and must be removed from the designated storage area by sunset. All kayak tours are to be completed and out of the water fifteen (15) minutes before sunset daily. Under no circumstances are kayak tour/rental operations permitted on July 4th of each year.

5. Kayak Concession Requirements.

The City's Lifeguard Services Division has established the **Kayak Concession Requirements, attached as Exhibit C, which are to be strictly adhered to by selected Proposer(s) at all times.** Each Proposer will carefully and comprehensively review the **Kayak Concession Requirements**

(Exhibit C) prior to proposal submission. These requirements may be amended at any time by the City at its discretion and each selected Proposer is required to fully abide by all of the terms and conditions of the most current version of the Kayak Concession Requirements.

All business transactions must be conducted within each of the selected Proposer(s)' listed storefront address. Selected Proposer(s) shall meet kayak tour participants inside of the selected Proposer(s)' store and conduct all orientation/training inside of the store or in the training area designated by the City. Businesses must have adequate space to accommodate customer volume and kayak inventory. **In order to be considered for Concessions, each Proposer(s) must demonstrate the ability to meet this requirement in the proposal. The City reserves the right to do facility site visits prior to completing the Proposer selection process.**

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

6. Consideration.

The consideration paid to City by each Selected Proposer shall be the greater of a percentage of gross income of twelve percent (12.00%) ("Percentage Fee") or a guaranteed annual minimum fee ("Minimum Fee"). Concessionaire is required to pay City, on a monthly basis, the greater of either the Percentage Fee or the Minimum Fee as described in this section. 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 for each subsequent month until either a new Agreement Year begins or the current Agreement ends.

For existing Concessionaires that submit a proposal under this RFP, the Minimum Fee will be established by the City based on historical use, and for new Proposers, the City will establish the Minimum Fee based on projected revenues proposed by Proposer, as stated below in Section C (9), to be paid on a monthly basis. This section of the proposal shall include a detailed justification for the proposed annual Minimum Fee for the first Agreement Year. The City reserves the right to adjust the Minimum Fee for

the remaining Agreement Years, based on the gross revenues from the first Agreement Year.

- The City, in its sole discretion, reserves the right to increase the Percentage Fee or Minimum Fee at any time during this Agreement by providing a thirty (30) day notice to Concessionaire. At a minimum, the City will conduct a review of the percentage fee at the first “Option Date” in Year Four.
- Percentage Fee is the percentage of gross income derived from kayak tour sales, individual kayak rentals and, souvenir photography and video sales of the tours, as further defined in the **Sample Agreement attached as Exhibit D**. Accessories sold in the store/shop will not be included in gross income.
- The annual minimum fee due to the City from each of the selected Proposer(s) is the greater of the Minimum Fee or the Percentage Fee. The Minimum Fee will be adjusted bi-annually to either Eighty Percent (80%) of the annual average of actual fees paid to the City for the previous two years of operation under the Agreement or to One Hundred Five Percent (105%) of the previous two year’s Minimum Fees, whichever is greater.
- Audit. The City, at its discretion and at any time during the term of the Agreement and for five (5) years thereafter, shall have the right to inspect and audit the business of each of the selected Proposer(s), its agents, and licensees operating on, and in connection with, the operation as necessary and appropriate for the City to determine the amounts of the Minimum Fee or Percentage Fee due to the City in compliance with the requirements of the Agreement. Pursuant to the Agreement, the books of account, records, and supporting documentation of each of the selected Proposer(s) will be kept for at least five (5) years and made available to the City. These books and records must be maintained separately from all other accounts not relating to the operation of Concessions under the Agreement.

7. Tentative Proposal Timeline.

Opening Date – Issuance of RFP	November 19, 2019
Optional Pre-Submittal Meeting	December 5, 2019
Final Opportunity to Submit Questions	December 11, 2019
Closing Date for Receipt of Proposals	January 13, 2020
Selection of Proposer(s)	February 3, 2020
Prepare and Execute Agreements	March 20, 2020
Agreements Begin	April 1, 2020

Note: This timeline does not consider unforeseen factors that could impact the timing of this RFP. It is the intent of the City to keep Proposer(s) informed of changes in the timeline as they occur.

B. TYPES OF PROPOSALS SOUGHT

Each proposal should reflect the City's desire to have an operator who provides a high level of service to the public while operating the Concessions in a fiscally responsible manner that preserves and improves the Site as a public resource for the benefit of the community.

C. OPERATING PLAN

Each of the Proposer(s) must submit a detailed proposed Operations Plan detailing the various types of programs, activities, and services proposed to be offered to fulfill the requirements of the Agreement ("Operating Plan").

Operating Plan(s) should cover the period for the first year of operation from April 1, 2020, through March 31, 2021. The information to be contained in the Operating Plan must include the following information and be titled "Attachment A: Operating Plan":

1. The number of tours sought (maximum of 15), the total number of kayaks to be utilized in the proposed operation, the number of participants per tour, the student to instructor ratios, the days and hours of operation, and a price list must be included. The Operating Plan(s) should also include a brief summary of the material covered during each tour offering. This material might include discussions on topics including marine life, coastal preservation, and water safety procedures. Note: The number of tours awarded to selected Proposers will be at the sole discretion of the City and may range from three (3) to fifteen (15).
2. Peak Season tour slots will be limited in number and these tours will be distributed among the selected Proposer(s). Each of the Proposer(s) shall provide information on both proposed future Peak Season operations as well as any historical summer kayak tour use as applicable. It is suggested Operating Plan(s) for the Peak Season be based on a range of three (3) to fifteen (15) tours maximum per day.
3. Each of the Proposer(s) must select Option A, B, C, or D (set forth in paragraph A(3) above, which will determine the number of allowable individual (non-tour) kayak rentals.
4. Each of the Proposer(s) shall describe in detail how their Operating Plan will address the various requirements set forth in the Kayak Concession Requirements (Exhibit C).
5. Each of the Proposer(s) shall briefly describe how its business will demonstrate a partnership with the local community minimizing impacts on residents and businesses. A proposal will describe how the Proposer will manage the following:
 - The flow of customer foot traffic;

- How and where customers will be processed, outfitted, trained, and transported to the boat launch;
 - Describe parking and/or shuttle plans for customers and employees;
 - Describe plan to keep sidewalks and streets free of congestion;
 - How the proposer will address cleaning of sand and other debris that accumulates in public areas near storefront.
6. Each Proposed must demonstrate space available to accommodate customer volume, kayaks, and other equipment inventory.
 7. Each Proposed must provide a detailed description of how the Proposer will operate the Concession, including a detailed description of the Proposer's organizational structure; a list of the leadership/management team, the responsibilities of the leadership/management team, staff, and any other personnel/member who are proposed to be involved in the operations under the Agreement.
 8. Each Proposer must provide the most recent three (3) years of financial statements (including, but not limited to: balance sheets, income statements, and cash flow statements) demonstrating successful kayak or similar concession management or must provide substantial justification as to why three (3) years of financial statements cannot be provided.
 9. The Agreement term shall be three (3) years and the Proposer shall include a statement of annual gross revenue projections from all operations for the proposed term of the Agreement and a financing plan.
 10. The Proposer(s), or signatory to the proposal, must be the direct operator of the entire Concessions under the Agreement. For proposals with multiple Proposers, Proposers should indicate whether any non-direct operator Proposers are seeking to be a co-signatory to the Agreement.
 11. Each Proposer must provide an Emergency Response Plan which sufficiently demonstrates the Proposer's preparedness to handle any potential emergencies that might occur in conjunction with operating Concessions and implementing the terms and conditions of the Agreement.
 12. Each Proposer must identify the necessary equipment, if any, to be provided by the Proposer needed to provide the level of service to be required under the Agreement. Title to equipment would remain vested in the Selected Proposer unless negotiated otherwise.

If any Proposer(s) elect to not operate during the Peak Season (March 15 – September 30), that should be indicated in the proposal.

All aspects of the Operating Plan, including proposed uses, fees, and licenses, are subject to approval by the City.

Proposals shall consider all applicable laws and available industry guidelines as they apply to liability, public health standards, recreational operations, Americans

with Disabilities Act (ADA) access, and the highest standards of maintenance of all facilities and equipment. Proposals must address any required off-site improvements, including but not limited to, curbs, gutters, sidewalks, utilities, landscaping, and ADA compliance for the Site.

D. AGREEMENT TERMS

The City anticipates entering into an Agreement with the selected Proposer to memorialize, in detail, the elements of the selected proposal. The terms and conditions shall be incorporated into **Exhibit D Sample Kayak Concession Agreement (Agreement)** to be negotiated and executed between the selected Proposer(s) and the City, subject to modification, deletion, and additional terms and conditions as determined by the City, at the City's sole discretion. If Proposer intends to request a modification from any of the identified terms or conditions found in the Agreement, such request must be included in the Proposal in order to be considered. Any proposed changes to the Agreement must be stated exactly and specify alternate proposed language in the proposal.

A form of the Agreement to be executed with the selected Proposer(s) is attached hereto as **Exhibit D: Sample Kayak Concession Agreement**. However, the City reserves the right to modify the Agreement to the extent deemed necessary by the City.

E. RESPONSIBILITIES OF PROPOSERS

1. Proposers are responsible for carefully examining this RFP and all documents incorporated into this RFP by reference before submitting a proposal. If selected for award of the Agreement, the Selected Proposer shall be bound by same terms and conditions included in this RFP.
2. Each Proposer is responsible for making all investigations and examinations necessary for formulating proposals related to operating Concessions at the Site. Submission of a proposal will be considered evidence that Proposer has familiarized themselves with the nature and extent of the requirements and has made such investigations and examinations.
3. The selected Proposer shall be responsible for obtaining all necessary approvals and permits, at their sole cost and expense, to the satisfaction of the City. The award of an Agreement by City is not a waiver of such requirements, which may include business licensing, and other permits. The Proposer(s) shall submit evidence to the San Diego Fire-Rescue Department Lifeguard Services Division prior to commencing operations that they have obtained all necessary permits and licenses.
4. Proposers may withdraw their proposals at any time prior to the selection process by providing a written notice to the City Contact.

F. PROPOSAL CONTENTS

All proposals must include, at a minimum, the information specified below. Failure to include any of this information shall cause to deem the proposal non-responsive and result in its complete rejection. The inclusion of any additional information that will assist the City in the evaluation is encouraged. The adequacy, depth, organization, and clarity of the proposal will influence, to a considerable degree, its evaluation as stated in Section J. The proposal submitted must be complete as the evaluation and selection of proposals shall be strictly based on the material contained in the proposals and pertinent findings. Proposers are advised to submit thorough, complete proposals, because there will be no auction or competitive negotiation and the City reserves the right to make a selection based solely on the information contained in submitted proposals.

Each proposal **MUST** include the following items:

1. **Cover Sheet**. Proposer shall submit with its proposal the signed Request for Proposal (RFP) Cover Sheet.
2. **Summary of Experience**. A resumé or summary of each Proposer's direct experience, which should be a minimum of three (3) years in the past five (5) years, and qualifications to managing similar operations to the Concessions presented in this RFP.
3. **References**. The names, addresses and telephone numbers of three (3) references, two business and one banking, who can provide a referral of Proposer's experience managing similar operations during the past five (5) years. See **Exhibit E: References**.
4. **Financial Statements**. A proposed financing plan, which shall demonstrate, at a minimum, the following:
 - a. Each Proposer must submit either: (a) financial statements for the preceding three (3) years that were audited or prepared by a certified public accountant; (b) tax returns for the preceding three (3) years; or (c) substantial justification as to why these documents cannot be provided. Each Proposer shall submit a full and detailed statement of their true financial condition as of June 30, 2019, or as recent as possible if that date is not available. The statement shall include the Proposer's assets, liabilities, and net worth, including the availability of operation capital and its source. If the Proposer plans to use borrowed capital, then the amount of borrowed capital proposed for the improvements and operation of the Concessions, and its source and terms of repayment, must be included in the financial statement.
 - b. Proposer must also provide financial projections for the term of the Agreement, by including a statement of estimated gross receipts and operating expenses.

- c. The minimum amount of funds needed to begin operation of the Concession described in Proposer's Operating Plan within the timeframe provided in the Operating Plan. Each Proposer must submit a detailed list of all of its assets and liabilities, initial available operating capital and its source, and the amount of any borrowed capital intended to be used for the operation of Concessions pursuant to the Agreement, and its source and terms of repayment.
- d. The City, at its discretion, shall have the right to inspect and audit the business of each Selected Proposer, its agents, and licensees operating on, and in connection with, the operation as necessary and appropriate for the City to determine the amounts of the Minimum Annual Fee or Percentage Fee due to the City in compliance with the requirements of the Agreement. Pursuant to the Agreement, the books of account, records, and supporting documentation of each Selected Proposer will be kept for at least five (5) years and made available to the City. These books and records must be maintained separately from all other accounts not relating to the operation of Concessions under the Agreement.

5. Operating Plan. Proposer shall submit the Operating Plan, as set forth in Section C, above. The proposer's Operating Plan should be titled "Attachment A: Operating Plan". All aspects of the Operating Plan, including proposed uses, fees, schedule, are subject to approval by the City.

- 6. Proposed Term. Confirm that Proposer understands the term of the Agreement is for three (3) years with the opportunity to request two one (1) year extensions, which will be granted in the City's sole discretion.
- 7. Credit Information. The **Credit Request and Release (attached as Exhibit F)** must be completed and included as part of the proposal. The CITY will use this information to verify the Proposer's creditworthiness. Other financial data may be required as determined by the CITY.
- 8. Summary of Employees' Qualifications. Each of the Proposer(s) must provide information regarding the personnel who will participate in carrying out the terms and conditions of the Agreement. In the event an individual has not been selected for a particular position at the time the proposal is submitted, a listing of the experience and qualifications that will be utilized in the selection process must be provided.
- 9. Emergency Response Plan. Each of the Proposer(s) must provide an Emergency Response Plan which sufficiently demonstrates the Proposer(s)' preparedness to handle any potential emergencies that might occur in conjunction with operating Concessions and implementing the terms and conditions of the Agreement.
- 10. Community Service. Each of the Proposer(s) must briefly describe (in less than 150 words) how its operation would benefit the City and its residents.

Include any plans that will be implemented under this proposal, as well as documentation supporting any past or current activities conducted by Proposer(s). An example of such activities may be charitable donations of tours or rentals to disadvantaged youth, beach clean ups, etc.

11. Lessee's Questionnaire. Each Proposer shall submit a completed Lessee's Questionnaire. Copy of **Lessee's Questionnaire is attached as Exhibit G**.
12. Work Force Report. Each Proposer shall submit a completed Work Force Report. A copy of **Work Force Report is attached as Exhibit H**.
13. Contractor Standards Pledge of Compliance. By submission of a proposal, the Proposer certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State, or Local departments or agencies. Proposer shall submit with its proposal a completed Contractor Standards Pledge of Compliance. A copy of the **Contractor Standards Pledge of Compliance is attached as Exhibit I**.
14. Business Tax Certificate. Proposers shall submit with its proposal a copy of their business tax certificate, or a copy of their application receipt.

G. NONCONFORMING PROPOSALS

Proposers requesting deviations from the provisions of this RFP should specifically identify the requirements being deviated from and address the requested deviation in their proposals. The City is not obligated to accept any proposal, whether conforming or nonconforming.

H. PRE-SUBMITTAL MEETING

To provide Proposer(s) with the opportunity to ask questions about the Agreement, proposal submittal or related matters, a pre-submittal meeting has been scheduled for December 5, 2019 at Lifeguard Headquarters, 2581 Quivera Court, San Diego, CA 92109, as set forth in the Request for Proposals (RFP) Cover Sheet. *Attendance is not mandatory*. It is the sole responsibility of the Proposer to become familiar with the scope of the City's requirements under this RFP prior to submitting a proposal.

I. PROPOSAL SUBMISSION

1. Due Date

Proposals must be received at the address listed below no later than 4:00 p.m. P.S.T. on January 13, 2020, as set forth in the Request for Proposals (RFP) Cover Sheet.

Proposals received after that time will not be considered.

2. Place of Delivery The delivery of the proposal to the CITY prior to deadline is solely and strictly the responsibility of the Proposer(s). The CITY will in no

way be responsible for delays caused by the United States Postal Service or for delays caused by any other occurrence. Hand or mail-deliver to:

City of San Diego
Lifeguard Division
2581 Quivira Court
San Diego, CA 92109
Attn: Gina Chartier, Office Manager

3. Faithful Performance Deposits All proposals **MUST** include a cashier's check or certified check in the amount of Five Thousand Dollars (\$5,000) payable to **City Treasurer** as a faithful performance deposit to assure that if the proposal is selected by the City, that the Proposer will enter in good faith into an Agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal checks will be accepted and no interest will be paid on deposits.
4. Number of Copies Proposer(s) Proposers are required to submit a total of four (4) original hard copy proposals (one unbound and three bound) and an electronic copy of their proposal on an USB flash-drive in sealed envelopes or cartons to the City Contact as set forth in the Request for Proposals (RFP) Cover Sheet. All materials submitted by Proposers become the property of the City of San Diego and may not be returned.
5. Questions and Comments Written questions and comments must be electronically mailed (e-mailed) to the City Contact no later than the date specified on the Request for Proposals (RFP) Cover Sheet. Only written communications relative to the RFP shall be considered. E-mail is the only acceptable method for submission of questions. Please email jvanderhagen@san-diego.gov. It is incumbent upon Proposers to verify that the City has received their questions and/or comments. All responses to questions will be posted on the City's website at (<https://www.sandiego.gov/real-estate-assets/>) as an Addendum to this RFP. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP. It is the responsibility of the Proposer to check the City's website for an Addendum to this RFP and to review it, if any.

J. PROPOSAL EVALUATION AND SELECTION

The City reserves the right to select the proposal(s) that will provide the best value to the City given the requirements of this RFP. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals at any time, including any proposals that have been scored or been the subject of oral presentations and/or interviews. The City also reserves the right to waive minor irregularities or variations to the specifications stated herein and in the solicitation process provided that such a waiver does not provide an unfair competitive advantage to the selected Proposer(s).

The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of an Agreement with the selected Proposer(s) based on the RFP and the Proposer's proposal, or award the Agreement without further negotiation.

The City reserves the right to inspect the Proposer's equipment and facilities to determine if the Proposer is capable of fulfilling the terms of the Agreement. Inspection will include, but is not limited to, survey of Proposer's physical assets and financial capability. Proposer, by signing the RFP and submitting a proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining Proposer's capability to perform pursuant to an Agreement. Should the City conduct this inspection, the City reserves the right to disqualify a Proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform pursuant to the Agreement.

Proposals shall be evaluated in a two-step process by an evaluation committee of qualified City staff, and if necessary other persons selected by the City.

In Step One, the committee will evaluate all responsive proposals based upon the information, references, and materials contained in the proposals as submitted. The City reserves the right to conduct oral interviews to clarify, determine additional information, and to further evaluate the proposers as needed at their sole discretion. The committee will score and rank all responsive proposals based on the evaluation criteria indicated below.

If the score of the highest five scoring proposal(s) resulting from Step One is more than ten (10) points greater than the scores of the other proposals, and the committee is satisfied that the highest five scoring proposals are sufficient for recommendation, the Proposers with the highest scoring proposals may be offered to enter into Agreements with City.

If one or more proposals score within ten (10) points of the highest scoring proposal, the process may proceed to Step Two. Only the Proposers with the highest five scoring proposals and those Proposers scoring within ten (10) points or less of the highest scoring proposals (collectively the "finalists") will be asked to participate in Step Two.

In Step Two, the finalists will be required to provide an oral presentation and/or participate in an interview of key personnel by appearing before the evaluation committee or by conference telephone call. The purpose of the oral presentation/interview is to provide the committee with an opportunity to further evaluate the finalists' proposals, which may include requesting clarification to the finalists' proposals and developing rapport. The finalists are required to make the oral presentation/interview within seven (7) workdays after request by the City. The committee may also inspect the finalists' facilities and perform other due diligence as may be determined by City. The committee may

then, at the committee's sole discretion, add up to eleven (11) additional points to the score of any finalist.

If the committee is satisfied that the top five-ranked proposals resulting from Step Two is sufficient for recommendation, the Proposers with the highest scoring proposal may be offered to enter into an Agreement with City.

Selection of the proposal(s) to be recommended to the City for award of the Concession will be based on the evaluation criteria listed below:

1. Responsiveness to RFP (Maximum 15 points):

The extent to which a proposal clearly addresses the elements of this RFP, including: quality, attractiveness, and thoroughness of the proposal; responsiveness to the minimum requirements described in the RFP; quality and extent of Concessions, and understanding the needs, goals, and objectives of the City while providing the highest level of service.

2. Operating Plan (Maximum 20 points):

The extent to which a Proposer clearly addresses the Operating Plan elements of this RFP, including, the quality and professionalism of the Proposer's Operating Plan; responsiveness to the Operating Plan minimum requirements described in the RFP, understanding the needs, goals, and objectives of the City and the ability of the Proposer to minimize the impacts of its operation of Concessions on the local community. The factors that will be considered include the Concession activities to be offered, overall quality of such Concessions, and the affordability of the Concessions to the community and general public.

3. Professional Experience and Qualifications (Maximum 20 points):

The extent to which a proposal demonstrates, among other things, the following: the Proposer's direct experience and qualifications in successfully managing an operation of the type contemplated in this RFP. The Proposer should include verification that his/her employees are well qualified to conduct the business contemplated in this RFP and should describe in detail the Proposer's ability to implement the components of the proposal. The Proposer should have at a minimum three (3) years' direct experience in the past five (5) years conducting similar operations.

Proposals submitted from an Existing Concessionaire will involve a review by City staff on the Existing Concessionaire's history with respect to: maintenance, compliance with existing agreement terms, and prompt rent payments.

4. Financial Capability (Maximum 15 points):

The extent to which a Proposer demonstrates, among other things, the following: the necessary financial capability and strength to successfully operate the Concessions in accordance with this RFP and the Agreement,

including the possibility of obtaining bonding; ability to adequately staff the proposed operation; and possession of, or ability to obtain, additional financing to address unexpected or emergency circumstances at the Site.

5. Community/Public Service (Maximum 10 points):

The Proposal will be evaluated based on the Proposer's overall ability to best serve the needs of the public by providing the most benefits which are accessible to all community members and the general public.

6. Safety Standards (Maximum 20 Points)

The Proposer(s)' Emergency Response Plan must sufficiently address any potential emergencies that might occur in connection with implementing the Agreement. Proposer(s)' staff must possess the necessary certifications and be responsible for ensuring that the Concessionaire complies with all requirements included in attached Exhibit C, Kayak Concession Requirements. The Proposer(s)' ability to successfully manage the safety of its operation will be evaluated.

Maximum Total Points: 100

7. Oral Presentation/Interview (Maximum 11 points)

If Step Two is initiated, points will be awarded to the extent to which a Proposer demonstrates, among other things, the following: ability to communicate information that is concise, easy to understand, and relevant to the goals of this solicitation.

K. ANNOUNCEMENT OF INTENT TO AWARD

1. Intent to Award Concession. The City will inform all proposers of its intent to award a Concession, in writing.
2. Tour Schedule. The Tour Schedule for each awarded Concessionaire will be pre-determined based on their ranking.
3. Obtaining Proposal Results. No proposal results can be obtained until the City announces the proposal(s) best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the Request for Proposals (RFP) Cover Sheet or (2) visiting the READ e-procurement system to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number set forth in the Request for Proposals (RFP) Cover Sheet. Proposal results will not be released over the phone.

L. ADDITIONAL INFORMATION FROM PROPOSERS

The City reserves the right to request information from Proposers to clarify information pursuant to this RFP.

M. INCURRED COSTS

Each Proposer is solely and fully responsible for any and all costs associated with submitting a response to this RFP. The City will not be responsible for any costs incurred by Proposers in the preparation and submission of proposals.

N. CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff (who are directly involved with this RFP) or evaluation committee members about this RFP from the date this RFP is issued until completion of an Agreement with the Selected Proposer.

O. ADDENDA

The City may issue addenda to this RFP as necessary. All addenda are incorporated into the RFP. The Proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

P. PUBLIC RECORDS

All proposals, and all contents thereof, received shall be considered confidential until the City's Real Estate Assets Department executes the Agreement. By signing this RFP and submitting a proposal, the Proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the Proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the Proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the Proposer must provide a specific and detailed legal basis, including applicable case law, which clearly establishes the requested information is exempt from the disclosure under the CPRA. If the Proposer does not provide a specific and detailed legal basis for requesting the City to withhold Proposer's confidential or proprietary information at the time of proposal submittal, the City will release the information as required by the CPRA and Proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the Proposer's obligation to defend, at Proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the Proposer's request. Furthermore, the Proposer shall indemnify and hold harmless the City, its elected officials, officers, and

employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at Proposer's request. Nothing in the Agreement resulting from the proposal creates any obligation on the part of the City to notify the Proposer or obtain the Proposer's approval or consent before releasing information subject to disclosure under the CPRA. Proposer must review, sign and submit **Exhibit H: Declaration Regarding Information Requested Under the Public Records Act with its Proposal.**

Q. CITY'S RIGHT TO REJECT ALL PROPOSALS

The City reserves the right to reject all offers and proposals regarding this RFP and the Concession Operations, including those submitted by Proposers who have outstanding debt with the City. The City reserves the right to determine which proposal it deems in the best interest of the City to accept. The City also reserves the right to waive any informality not material to cost or performance in any proposal provided that any such waiver is deemed to be inconsequential and does not provide an unfair competitive advantage to any Proposer.

R. QUALIFICATION OF PROPOSAL

This is not a bid solicitation and the City is not obligated to accept any proposal or to negotiate with any Proposer. The City Council reserves the right to reject any Agreement presented as a result of a Proposal without cause or liability. All transactions discussed, referenced, or implied herein are subject to final approval by the City Council.

S. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or provision of services. The information contained in this RFP will be made available in alternative formats to disabled persons upon request. It is the policy of the City to encourage equal opportunity in its contracts and leases. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition, or place of birth.

T. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

Proposer understands that failure to comply with the following requirements and/or submitting false information in response to these requirements may result in rejection of the proposal by the City and debarment of the Proposer from participating in City contracts for a period of not less than one (1) year:

1. Equal Opportunity Contracting. Proposer acknowledges and agrees that it

is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Proposer and all of its subcontractors are individually responsible to abide by its contents.

Proposer shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Proposer will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Proposer shall insert the foregoing provisions in all contracts and subcontracts for any work covered by the proposal so that such provisions will be binding upon each contractor and subcontractor. Proposer agrees that compliance with Equal Employment Opportunity (EEO) provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

Proposer shall submit a current Work Force Report or a current EEO Plan, as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Proposer will take to achieve the City's commitment to equal employment opportunities. **A copy of Work Force Report is attached as Exhibit H.**

2. Equal Benefits. Proposer shall comply with San Diego Municipal Code sections 22.4301- 22.4308, which require Concessionaires of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the Agreement.
3. Local Business and Employment. Proposer acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with the proposal from local residents and firms as opportunities occur. Proposer shall hire qualified local residents and firms whenever feasible.

U. RETURN OF FAITHFUL PERFORMANCE DEPOSIT

All good faith deposits will be returned to unsuccessful Proposers within thirty (30) days of the execution of the Agreement(s) with the selected Proposer(s). For the selected Proposer(s), the deposit will be applied to the Agreement security deposit upon execution of the Agreement between the selected Proposer(s) and the City. Should the selected Proposer(s)

unilaterally withdraw from negotiations after selection, the entire deposit of the Selected Proposer will be forfeited to the City.

V. PROTESTS

The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures shall apply to this RFP and provide unsuccessful Proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

W. EXHIBITS

Exhibit A: Site Map/Map of Boat Launch Ramp (La Jolla Shores)
Exhibit B-1: Primary Kayak Tour Schedule
Exhibit B-2: Secondary Kayak Tour Schedule
Exhibit C: Kayak Concession Requirements
Exhibit D: Sample of Kayak Concession Agreement
Exhibit E: Lessee's Questionnaire
Exhibit F: Work Force Report
Exhibit G: Contractor Standards Pledge of Compliance
Exhibit H: Declaration Regarding Information Requested Under the Public Records Act

The foregoing forms listed as Exhibits E, F, G, and H are required to be completed and submitted with the proposal. Failure to submit any of the forms listed on this RFP will result in the City deeming the proposal incomplete and non-responsive.

Exhibit A

Site Map



Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

This map contains information from the San Diego Association of Governments (SANDAG) Regional Information System. This map cannot be reproduced without the written permission of SANDAG.

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EXHIBIT B-1
CITY OF SAN DIEGO
2020 PRIMARY KAYAK TOUR SCHEDULE

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

EXHIBIT B-2
CITY OF SAN DIEGO
2020 SECONDARY KAYAK TOUR SCHEDULE

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

EXHIBIT C
CITY OF SAN DIEGO
KAYAK CONCESSION REQUIREMENTS

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

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

1. Ocean Conditions and Safety

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

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

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

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

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

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

2. Identifying Markers

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

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

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

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

3. Concession Site/Location

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

4. Boat Launch/Operator Vehicles

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

- Vehicles and trailers must possess current registration.
- Concessionaires must provide off-street overnight parking for vehicles and trailers.
- Vehicles must be "all-wheel drive," in that power is supplied to both axles and all wheels.
- Vehicles and trailers must be clearly marked with the Concessionaire's name by either permanent or magnetic signs, and plainly visible and legible from a distance of one hundred (100) feet.
- The boat launch area must be kept clear at all times. Kayaks must not be left in a position that obstructs free use of the launch area.

- Concessionaire, its agents, and/or employees must at all times obey all posted signs, curb markings and any direction given by the CITY.
- Except where exiting the beach, Concessionaires shall ensure sand from transport vehicles is not deposited on City streets or alleys.
- All concessionaire vehicles must come to a complete stop at the entrance to the boat launch and be directed onto the beach by an employee outside the vehicle who monitors the path for safety.

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

5. Concession Site - Regulations

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

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

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

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

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

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

- No more than one (1) tour allowed for each designated time slot.
- There shall be at least one (1) kayak guide for every five (5) client kayaks (5:1). In the event that a kayak tour exceeds five (5) client kayaks, an additional kayak guide will be required.
- The ratio of client individuals to kayak guides shall never exceed ten (10) client individuals to one (1) kayak guide (10:1), regardless of the number of kayaks.

7. Water Activity Zones and Areas of Special Interest

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

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

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

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

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

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

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

8. Equipment:

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

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

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

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

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

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

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

9. Waivers

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

10. Safety Precautions/Emergency Response Plan

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

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

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

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

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

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

11. Minimum Requirements for Guides

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

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

- A valid Basic First-Aid certification from the American Red Cross or the equivalent.

- A valid CPR certification by either the American Red Cross as a Professional Rescuer or American Heart Association as a Healthcare Provider or the equivalent.
- Certificate of completion for the Lifeguard Division Kayak Guide Orientation Training Course.
- A certificate of completion of kayak guide training. Each Concessionaire will be required to provide annual training for its guides. An outline of training subjects and course content is required with the Concessionaire's Operating Plan and must at the minimum include the following:
 - Review of La Jolla coastal geography
 - Review of Kayak Concession Requirements (as set forth in Exhibit C)
 - Weather and surf conditions
 - Hazards: large surf, wind, location of local caves and cliffs
 - Emergency action plan
 - Flotation devices, emergency signaling devices
 - Instructing others on the topics of kayak paddling and maneuvering skills
 - Local rules and laws pertaining to Water Activity Zones
 - Laws pertaining to the La Jolla Ecological Preserve
 - Signs and symptoms of hypothermia
 - Types of different local marine life
 - Review of general Lifeguard Operations
 - Proper use of marine band VHF radio and cell phone
 - Applicable federal and state laws and regulations for vessel operation
- Supervise and instruct clients and be fully capable of giving a suitable orientation talk to all clients while in kayaks on relevant subjects which may include, but are not limited to, overall safety, personal flotation devices, emergency signaling devices, and kayak paddling/maneuvering skills.
- Possess a general knowledge of emergency access and evacuation routes, and how to summon and assist any emergency response personnel.

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

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

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

12. Violations/Safety Notice

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

If a Concessionaire, its employee, agent, or representative is issued a “Violation of Concession Agreement/Safety Notice” or convicted for any violation related to their kayak operations, the CITY shall evaluate the conviction or notice of violation for an appropriate and reasonable sanction, up to and including a suspension or revocation of the Concession Agreement. Such punishment will be in addition to any penalty assessed by the courts.

13. Additional Concession Stipulations

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

EXHIBIT D
CITY OF SAN DIEGO
SAMPLE 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 (“CONCESSIONAIRE”), to be effective April 1, 2020 following the execution by the City Attorney (“Effective Date”), as follows:

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

Concessions at the Site may be terminated or changed for any reason by CITY upon thirty (30) days written notice from CITY to CONCESSIONAIRE. However, the CITY may terminate or change any and all concessions at the Site without any notice to Concessionaire’s if such termination or change is in the interest of public safety. If an alternate site is not available, a proportionate amount of the fixed concession Minimum Fee (as specified in Section 10.B.) may be adjusted by CITY for the deleted site.

3. Allowed Uses. This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate Kayak Concessions. The term Concessions means an operation involving the conducting of kayak tours and rentals, the sale of souvenir photos and videos of the tours, as well as delivering and removing rental and tour kayaks serving the general public under the terms and conditions of this Agreement. There shall be no commercial use of Laureate or Kellogg Parks by the CONCESSIONAIRE. No solicitation or marketing is permitted on any portion of any City beach. Renting or selling of beach equipment or any other merchandise is not allowed under this Agreement. Any use of the Site other than for Concessions as described herein shall constitute good cause for immediate termination of this Agreement.

4. Maximum Days and Hours of Operation. CONCESSIONAIRE shall not conduct any Concession prior to 8 a.m. daily throughout each Agreement Year (defined in Section 6). All kayaks must be removed from the designated storage area before dark. All kayak tours are to be completed and out of the water fifteen (15) minutes before sunset daily.

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

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

8. Revocable License. This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked, terminated, or suspended by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of the revocation, termination, or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY's revocation, termination, or suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.B that conflict with or prohibit CONCESSIONAIRE's use the Site.

9. Special Provisions

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

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

B. Exclusiveness of Agreement and Unauthorized Vending. In addition to Special Events described in Section 4.B., CITY may, during the term of this Agreement, enter into Agreements with other concessionaires to provide - related Concessions during times not scheduled for operations in the approved Operating Plan at the Site permitted in this Agreement. In addition, should any existing launch times become vacant throughout the term of this Agreement,

CITY may distribute these open times among the existing concessionaires at its own discretion. However, CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Site shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.

- C. Concession Site. CONCESSIONAIRE shall erect no improvements nor place any items on the Site without prior written approval by the CITY. The Site must be maintained to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Site by the CONCESSIONAIRE must be approved in writing by CITY and shall not remain on location after permitted hours of operation, unless prior written approval of CITY is obtained. If in the opinion of CITY, the number of scheduled tours within any Concession covered under this Agreement at any times falls short of or exceeds the number of scheduled tours needed to adequately serve the public, CONCESSIONAIRE will, upon receipt of notice from CITY, adjust the number of scheduled tours to the number specified by CITY. CITY will not be liable to CONCESSIONAIRE in any way for such adjustments. CONCESSIONAIRE will operate no more and no fewer than the scheduled tours designated in this Agreement unless CITY decides to change the number of scheduled tours.
- D. No Improvements. No improvements, trade fixtures, structures, and installations or additions to the Site are allowed to be installed by CONCESSIONAIRE. All personal property remaining on the Site after expiration or termination of this Agreement will become the property of CITY.
- E. Storefront. CONCESIONAIRE will maintain a storefront. All business transactions must be conducted within the listed storefront address. Kayak tour participants will meet inside t CONCESSIONAIRE's store and conduct all orientation/training inside of the store or in the training area designated by the CITY. Businesses must have adequate space to accommodate customer volume and kayak inventory.

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

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

10. Fees.

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

- A. Percentage Fees. Percentage Fees will consist of twelve percent (12.00%) of the gross revenue resulting from the Kayak Concession operations permitted under this Agreement during each month of an Agreement Year. The CITY, in its sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Allowed Uses, as may be approved in writing by the CITY prior to the commencement of any additional service or operation. However, any activity conducted on the Site without the prior written approval of the CITY will be subject to the requirements of Section 10.F. Unauthorized Use Charge.

The City in its sole discretion, reserves the right to increase the Percentage Fee or Minimum Fee at any time during this Agreement by providing a thirty (30) day notice to Concessionaire. A review of the percentage fee will be conducted at the first "Option Date" in Year Four.

B. Gross income is derived from kayak tour sales, individual kayak rentals, and, souvenir photography and video sales of the tours. Accessories sold in the store/shop will not be included in gross income.

C. Minimum Fees. The Annual Minimum Fee established for the first Agreement Year following the effective date of this Agreement is _____ thousand _____ hundred and _____ dollars (\$ _____), which is _____ hundred and _____ dollars (\$ _____) on a monthly installment basis ("Monthly Minimum Fee").

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

D. Minimum Fee Adjustment. Effective at the beginning of the first day of the third and fifth Agreement Years of this Agreement ("Adjustment Date"), the annual Minimum Fee will be set at eighty percent (80.00%) of the annual average of the Total Fees Paid under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment date. The annual average of the Total Fees Paid will then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments will be calculated by the CITY upon completion of payments due for the preceding years to determine the amount of the Minimum Fee. Until such calculations are completed, CONCESSIONAIRE will continue paying the monthly Minimum Fee at the current rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate will be paid to the CITY within thirty (30) days following written notice provided pursuant to Section 47 of this Agreement. In no event will the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the Adjustment Date. In the event that the Total Fees Paid prior to the Adjustment Date do not exceed the current annual Minimum Fee, the annual Minimum Fee will be increased to one-hundred five percent (105%) of the annual Minimum Fee most recently in effect.

E. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any fees when due, CONCESSIONAIRE will pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee shall be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE shall pay in addition to delinquent fee. The parties agree that such late fees are appropriate to compensate the CITY for loss resulting from

concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.

- F. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY, as an additional fee, an unauthorized use charge equal to one hundred percent (100%) of the Gross Revenue (as defined in Section 10.G.) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in the Agreement for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, shall constitute an authorization of an unauthorized use, and shall not be waiver of any of the CITY's rights under the Agreement.
- G. Gross Revenue. "Gross Revenue," as used in this Agreement, will include all income resulting from Concession kayak tour sales, individual kayak rentals, and the sale of photography and video sales of the tours, whether received or to become due; provided, however, that Gross Revenue will not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Gross Revenue includes all revenue received by CONCESSIONAIRE from internet sales (for example, if using a website such as Groupon, Gross Revenue would include all payment received by CONCESSIONAIRE from a Groupon sale). Possessory interest taxes or other property taxes will not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross Revenues will not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees, permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site shall be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.
- H. Payment Procedure. CONCESSIONAIRE will provide CITY with a correct income statement for the Site operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Revenue in a form selected by CITY. This income statement shall be due to CITY by the end of the calendar month immediately following the month for which the income statement was generated. The income statement shall be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each income statement shall include:

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

I. Inspection of Records.

- i. Records. CONCESSIONAIRE will at all times during the Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records will be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine the Gross Revenue. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered will be read and recorded at the beginning and end of each business day. Regarding admission charges or concession fees, CONCESSIONAIRE will issue serially numbered tickets for such admission or concession fees and will keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such a system is approved by the CITY.
- ii. Financial Statements. *Within sixty (60) days after the end of each Agreement Year, CONCESSIONAIRE shall at its sole cost and expense, submit to CITY a statement in which the total Gross Revenue and the corresponding amounts of Percentage Fees paid CITY for that Agreement Year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement shall be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which will be legally binding upon CONCESSIONAIRE. Failure to provide financial statements as described in this paragraph will constitute a material breach of this Agreement.*

- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.I.i, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, will have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Agreement. At CITY's request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. Audit Cost. The full cost of the CITY's audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):
 - A. The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) during the period of time being audited or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
 - B. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any fee deficiency determined by the audit will be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under this Agreement Section 10.E. CITY will credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY shall refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- J. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY

inspection is, like all other failures to comply with covenants of this Agreement, a material breach of this Agreement and good cause for termination.

- K. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- L. Security Deposit. The CONCESSIONAIRE will deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of five thousand dollars (\$5,000.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit will be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the deposit or any remaining balance will be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee.
CONCESSIONAIRE shall maintain this security deposit throughout the Term of this Agreement. Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of its property from the Site.
- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon ten (10) days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
- ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Agreement.

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

Notwithstanding any provision of this Agreement to the contrary, if CONCESSIONAIRE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, CONCESSIONAIRE will be in default of this Agreement. CONCESSIONAIRE will not modify any policy or endorsement thereto which increases CITY's exposure to loss. CONCESSIONAIRE will obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which will be subject to CITY's written approval thereof:

- A. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which will cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There will be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs will be outside the limits of the policy.
- B. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance will cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement.
- C. Workers' Compensation Insurance, as required by applicable laws, for all of CONCESSIONAIRE's employees who are subject to this Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- D. Marine General Liability (MGL) With limits of no less than \$2 million per occurrence and \$4 million aggregate.
- E. Causes of Loss-Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, all its own cause and expense, Causes of Loss-Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Site in an amount to recover one hundred percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
- F. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a)

ongoing operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; (b) CONCESSIONAIRE's products; (c) CONCESSIONAIRE's work, including without limitation CONCESSIONAIRE's completed operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; or (d) the Site.

- G. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by CONCESSIONAIRE's policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives, and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives, and agents will be in excess of CONCESSIONAIRE's insurance and will not contribute to it.
- H. Severability of Interest. Each policy must be endorsed to provide that CONCESSIONAIRE's insurance will apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and will provide cross-liability coverage.
- I. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Agreement will only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers will be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer will be subject to CITY's approval in each instance.
- J. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- K. Continuity of Coverage. All policies will be in effect on or before the first day of the Term, except "course of construction fire insurance" will be in force on commencement of all authorized construction, and full applicable fire insurance coverage will be effective upon completion of each insurable improvement. The policies will be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE will furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE will provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, CONCESSIONAIRE will immediately notify CITY and will immediately obtain replacement insurance as

soon as possible.

L. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE will also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

M. Accident Reports. CONCESSIONAIRE will immediately report to CITY any accident causing property damage or injury to persons on the Site or otherwise related to the Allowed Uses. Such report will contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photographs or video, if any, and other pertinent information.

17. Indemnification. CONCESSIONAIRE will defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, maintenance, restoration, or improvement of the Sites, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold CITY harmless will not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE will pay the CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.

18. Nondiscrimination. This Agreement is made and accepted upon and subject to the covenant and condition, which will run with the land, that CONCESSIONAIRE or any person claiming under or through CONCESSIONAIRE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use, or occupancy of the Sites or in the selection, location, number, use or occupancy of tenants, subtenants, or vendees in the Sites.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks

to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.

20. Drug-free Workplace. CONCESSIONAIRE will be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Site and specifying the actions that will be taken against employees for violations of the prohibition; and
- B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.

21. Accessibility Compliance. CONCESSIONAIRE will, as applicable to the Sites and CONCESSIONAIRE's possession, use, and occupancy of the Sites, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, CONCESSIONAIRE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). CONCESSIONAIRE's compliance will include without limitation the following:

- A. CONCESSIONAIRE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;
- B. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of CONCESSIONAIRE;
- C. CONCESSIONAIRE will post a statement addressing the requirements of the ADA

in a prominent place at the work site;

D. Where required by law, all improvements, fixtures, structures, or installations on the Sites will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Sites which deny access to individuals with disabilities. All improvements and alterations will be at CONCESSIONAIRE's sole expense.

E. CONCESSIONAIRE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this Agreement.

22. CONCESSIONAIRE's Risk. CONCESSIONAIRE will bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.

23. Nuisance and Noise Disturbances. CONCESSIONAIRE will not use the Site in any manner which, in CITY's opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).

24. No Assignment. CONCESSIONAIRE will not assign any rights granted by this Agreement or any interest herein without CITY's prior written consent. Approval of any such proposed assignment may be withheld in CITY's sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.

25. Signs. CONCESSIONAIRE will display the Concession sign displaying this is a CITY-approved Concession at all times while operating the Concessions. CITY will provide a sign during the first Agreement Year. If such sign is lost or stolen, CONCESSIONAIRE must obtain a duplicate sign and its sole expense. CONCESSIONAIRE will not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices, or advertising without CITY's prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE will remove the item at its expense within 24 hours from receiving notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.

26. Charter Section 225. Pursuant to San Diego City Charter Section 225, CONCESSIONAIRE and assignees will make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. CONCESSIONAIRE's failure to fully disclose all of the information required by Charter Section 225 or CONCESSIONAIRE's failure to require each of its assignees to fully disclose such

information will be a default of this Agreement. Pursuant to City Charter Section 225, every person or entity that will have an interest in this Agreement as an assignee must be reviewed and approved by City.

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

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

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

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

throughout the term of this Agreement. CONCESSIONAIRE's failure to maintain equal benefits will be a default of this Agreement.

35. Equal Pay Ordinance. Unless an exception applies, CONCESSIONAIRE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, CONCESSIONAIRE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- A. Notice Requirement. CONCESSIONAIRE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
36. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of CONCESSIONAIRE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
37. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.
- Therefore, CONCESSIONAIRE will, at a minimum, implement and comply as applicable with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).
- It is ultimately CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CONCESSIONAIRE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
38. Hazardous Substances. CONCESSIONAIRE will not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors will not install, store, utilize, generate or sell any Hazardous Substance on the Sites without CITY's prior written consent. CONCESSIONAIRE will, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing,

storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

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

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

- G. Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's occupancy, use, development, maintenance, or restoration of the Sites ("CONCESSIONAIRE's Operations"), resulted in any Hazardous Substance being released on, from, or beneath the Sites, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment will be obtained at CONCESSIONAIRE's sole cost and expense, and will establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's Operations on, in, from, or under the Sites, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Sites, then the environmental assessment will include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE will cause, or if CONCESSIONAIRE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Sites and compliance with environmental law and regulations are achieved, and CONCESSIONAIRE will pay all costs and expenses therefor.

39. Storm Water Pollution Prevention Program. CONCESSIONAIRE will comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

- A. CONCESSIONAIRE will comply with the CITY's Jurisdictional Runoff

Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

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

46. Entire Agreement. This Agreement, along with all attachments and incorporated documents, constitutes the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them and pertaining to this Agreement and CONCESSIONAIRE's occupancy, use, development, and maintenance of the Site. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
47. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

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

CONCESSIONAIRE:

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

51. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.
52. Accessibility Assessment. In accordance with California Civil Code section 1938, City hereby states that the Site has not been inspected by a Certified Access Specialist (CASP). Further, pursuant to California Civil Code section 1938(e), CITY is required to state: A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.
53. Single Use Plastic Reduction Ordinance. Unless an exception applies, CONCESSIONAIRE will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Agreement, CONCESSIONAIRE certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.
54. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
55. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
56. Exhibits. All exhibits referenced in this Agreement are incorporated into this Agreement by this reference. In the event of a conflict between this Agreement and any exhibit to this Agreement, the terms, conditions, and obligations of this Agreement shall control.
57. California Public Records Act. CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY by PERMITTEE pursuant to this Permit is

or is not a public record subject to disclosure under the California Public Records Act (“CPRA”). PERMITTEE shall hold CITY, its elected officials, officers, employees, agents, and representatives harmless for CITY’s disclosure of any such information in response to a request for information under the CPRA.

- A. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY’s disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY’S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

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

- A. PCI Compliance. CONCESSIONAIRE acknowledges and agrees that to the extent that credit card data is collected, processed, stored or transmitted, CONCESSIONAIRE must adhere to the Payment Card Industry Data Security Standards (PCI DSS) and must specifically comply with the CITY PCI requirements described herein.
- B. CONCESSIONAIRE Compliance with Payment Card Industry Security Standards Council Standards. CONCESSIONAIRE must maintain full compliance with all current and applicable Payment Card Industry Security Standards Council Standards (PCI SSC), for all Services performed under this Agreement or other contracts managed by CONCESSIONAIRE. CONCESSIONAIRE acknowledges and agrees that it will ensure that any subcontractors or other service providers that it uses to assist with performance of this Agreement will also maintain full compliance with all current and applicable PCI SSC standards.
- C. Attestation of PCI Compliance. CONCESSIONAIRE must, upon request of the CITY annually on the anniversary of the Effective Date, provide the CITY with a copy of the Level 1 Service Provider attestation of compliance which must be approved and signed by a qualified security assessor (QSA) company recognized by the PCI SSC. Any deficiencies noted in an annual assessment must be communicated to CITY, in writing, within thirty (30) days of the report, and include a remediation date in accordance with the PCI SSC’s prioritized approach. Any deficiencies noted in an annual assessment must be remediated at CONCESSIONAIRE’s sole cost and expense.
- D. CONCESSIONAIRE Remediation. CONCESSIONAIRE must remediate, in a timely manner and at CONCESSIONAIRE’s sole cost and expense, any outstanding audit finding by CONCESSIONAIRE or CITY’s QSA as it relates

to CONCESSIONAIRE's provision of PCI related hardware or services in compliance with the most current PCI DSS and PCI SSC.

- E. Service Provider Responsibility Matrix. CONCESSIONAIRE must complete a Service Provider Responsibility Matrix (Matrix) in either the form provided by CITY, or in a format approved by CITY, and account for all management services that will be supplied to the CITY as they relate to cardholder data that is stored, processed, or transmitted on behalf of CITY. The Matrix shall be updated in regularly and in a timely manner to reflect any changes in the provision of such management services. Upon its completion, the Matrix is hereby incorporated into the Agreement and any updates or revisions to the Matrix will also be incorporated into this Agreement without need for an amendment.
- F. CONCESSIONAIRE must reply immediately to the CITY, via email and phone call, any known device tampering or other breach, intrusion, or unauthorized access to cardholder data stored by or on behalf of CONCESSIONAIRE. For purposes of this subsection a, reporting to the CITY's Information Security Officer (CISO) and the Office of the City Treasurer will be deemed sufficient for notifying the CITY. CONCESSIONAIRE also agrees to assume responsibility for informing all affected individuals in accordance with applicable law.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CONCESSIONAIRE

By: _____
Name: _____
Title: _____

THE CITY OF SAN DIEGO, a California municipal corporation

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

Environmental Analysis Section Environmental Clearance:

Date: _____

BY: _____
Name: _____
Planning Department

Approved as to form this

_____ Day of _____, 2019

MARA W. ELLIOTT, City Attorney

BY: _____
Name: _____
Title: _____

EXHIBIT A
Site Map



Exhibit B-1
Primary Kayak Tour Schedule

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

Exhibit B-2
Secondary Kayak Tour Schedule

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

EXHIBIT E

CITY OF SAN DIEGO

CONCESSIONAIRE'S QUESTIONNAIRE

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Concessionaire (always complete):

Exact name of proposed Concessionaire (complete only if applicable):

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: _____, ____.

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: _____

Title: _____

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate Assets if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub) Lessee exactly as it will appear on the actual tenancy document:

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

Telephone No.: _____ Fax. No.: _____

E-mail Address: _____

3. Billing Address (***only if different from Mailing Address***);

Telephone No.: _____ Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (); Partnership (); Corporation ();

Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): _____

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization: _____

2. General Partnership ()

Limited Partnership ()

Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

Date	Book	Page	County
------	------	------	--------

4. Has the partnership conducted business in San Diego County?

Yes () No () If so, when? _____

If so, where? _____

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
a. Publicly () Privately ()
b. If publicly held, how and where is the stock traded?

6. Please list the following:

	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of Common Stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____
7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____
Title: _____
Address: _____

No. of Shares: _____

Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____
Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____
Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____
Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless

of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer / Member	Name	Address	Share %

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No ()
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No ()
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name _____
Date of Birth _____
Place of Birth _____
Social Security Number _____
Driver's License Number/State _____
Home Address _____

Previous Address _____

Home Telephone No. _____
Employer _____
Occupation _____
Business Address _____
Business Telephone No. _____
Business Fax No. _____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date _____ Signed _____

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.

PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operatio n	Uses (Identify Each Use)				
1	\$	\$	\$	\$	\$
2					
3					
4					
5					

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

Please summarize the terms and conditions of the purchase, sale, or transfer of Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue, Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: _____ Fax Number: _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: _____ Fax Number: _____ Email: _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: _____ Email: _____

- ☐ One San Diego County (or Most Local County) Work Force – Mandatory
☐ Branch Work Force *
☐ Managing Office Work Force

Check the box above that applies to this WFR.

*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of _____

(Firm Name)

_____, _____ hereby certify that information provided
(County) (State)

herein is true and correct. This document was executed on this _____ day of _____, 20.____

(Authorized Signature)

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--------------------------------------|---|
| (1) Black or African-American | (5) Native Hawaiian or Pacific Islander |
| (2) Hispanic or Latino | (6) White |
| (3) Asian | (7) Other race/ethnicity; not falling into other groups |
| (4) American Indian or Alaska Native | |

Definitions of the race and ethnicity categories can be found on Page 4

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--------------------------------------|---|
| (1) Black or African-American | (5) Native Hawaiian or Pacific Islander |
| (2) Hispanic or Latino | (6) White |
| (3) Asian | (7) Other race/ethnicity; not falling into other groups |
| (4) American Indian or Alaska Native | |

Definitions of the race and ethnicity categories can be found on Page 4

TRADE OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Work Force Report

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (American Indian or Alaska Native, Asian, Black or African-American, Native Hawaiian or Pacific Islander, White, and Other) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report¹. By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county². If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report^{1, 3}. In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

RACE/ETHNICITY CATEGORIES

American Indian or Alaska Native – A person having origins in any of the peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Asian – A person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American – A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Pacific Islander – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White – A person having origins in any of the peoples of Europe, the Middle East, or North Africa.

Hispanic or Latino – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.

Exhibit A: Work Force Report Job Categories – Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers

Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics,

Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material
Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning
and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry
Workers

Exhibit B: Work Force Report Job Categories–Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard
Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of
Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and
Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and
Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration
Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair
Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment
Operators
Pile-Driver Operators
Operating Engineers and Other Construction
Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons**Roofers****Security Guards & Surveillance Officers****Sheet Metal Workers****Structural Iron and Steel Workers****Welding, Soldering and Brazing Workers**

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine
Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

EXHIBIT G: CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE

City of San Diego CONTRACTOR STANDARDS Pledge of Compliance

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

A. BID/PROPOSAL/SOLICITATION TITLE:



B. BIDDER/PROPOSER INFORMATION:

Legal Name	DBA		
Street Address	City	State	Zip
Contact Person, Title	Phone	Fax	☐

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

Corporation Date incorporated: ____ / ____ / ____ State of incorporation: _____

List corporation's current officers:

President:	_____
Vice Pres:	_____
Secretary:	_____
Treasurer:	_____

Is your firm a publicly traded corporation? **Yes** **No**

If **Yes**, name those who own ten percent (10 %) or more of the corporation's stocks:

Limited Liability Company Date formed: ____/____/____ State of formation: ____

List names of members who own ten percent (10%) or more of the company:

Partnership Date formed: ____/____/____ State of formation: ____

List names of all firm partners:

Sole Proprietorship Date started: ____/____/____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Joint Venture Date formed: ____/____/____

List each firm in the joint venture and its percentage of ownership:

Note: To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: _____

Point of Contact: _____

Address: _____

Phone Number: _____

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

☐ Yes

☐ No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

☐ Yes

☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

☐ Yes

☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

☐ Yes

☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

☐ Yes

☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? Yes ☐ No ☐ If Yes, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES ☐ NO ☐

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES ☐ NO ☐

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

L. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated ____/____/____

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

- (a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).
- (c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Name and Title

Signature

Date

**City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Print Name, Title

Signature

Date

EXHIBIT H

DECLARATIONS REGARDING INFORMATION REQUESTED UNDER THE CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the named Proposer declares and acknowledges the following:

Any information submitted in response to this Request for Proposal is a public record subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a proposer submits information clearly marked confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Proposer** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to section of the California Public Records Act will not suffice. Rather, the Proposer must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Proposer does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Proposer will hold the City harmless** for release of this information.

It will be the **Proposer's obligation to defend**, at Proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Proposer's request. Furthermore, the Proposer shall indemnify the City and **hold it harmless** for any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Proposer's request.

Nothing in this Agreement creates any obligation for the City to notify the Proposer or obtain the Proposer's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Name of Organization

Signature of Authorized Representative

Printed/Typed Name

Date