



Subject: License and Programming Agreement with Alder Creek Kayak and Canoe	
Meeting Date: May 21, 2019	Staff Member: Kelliagh Brown Department: Parks & Recreation
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable <hr/> Comments:
Staff Recommendation: Continue to contract with Alder Creek Kayak and Canoe for Programming at George Rogers Park.	
Recommended Language for Motion: Authorize City Manager to execute a License and Programming Agreement with Alder Creek Kayak and Canoe ("Alder Creek") for operation at George Rogers Park for 3 years, with options for 3 additional 1 year extensions.	
Project / Issue Relates To: <input type="checkbox"/> Council Goals/Priorities <input type="checkbox"/> Adopted Master Plan(s) <input checked="" type="checkbox"/> Not Applicable	

BACKGROUND

The Parks and Recreation Department proposes to continue the opportunity for Lake Oswego residents to enjoy access to the Willamette River by contracting with Alder Creek to offer public rental of kayak and SUPs, in addition to related retail sales at George Rogers Park.

Alder Creek has contracted with Parks & Recreation Department to offer water sport classes since 2011 because Parks & Recreation is unable to provide these programs internally. Over the past three summer 2016 through 2018 the Parks & Recreation Department has successfully partnered with Alder Creek to provide exceptional classes, activities, camps and rentals out at George Rogers Park.

DISCUSSION

There are multiple benefits to entering into this agreement with Alder Creek. Two of the key benefits are increased use of our beautiful parks and improving accessibility to activities on the water in our own backyard.

There are no direct costs to the Parks & Recreation Department; rather the City will receive additional revenues as a percentage from the public rentals and sales, in consideration for the use of George Rogers Park. Moving forward with this agreement will continue the Lake Oswego program for participants to engage in outdoor recreation activities.

RECOMMENDATION

Authorize City Manager to execute a License and Programming Agreement with Alder Creek Kayak and Canoe (“Alder Creek”) for operation at George Rogers Park for 3 years, with options for 3 additional 1 year extensions

ATTACHMENTS

1. Programming and Facility Use Agreement with Exhibits A and B



PROGRAMMING AND FACILITY USE AGREEMENT

George Rogers Park

Licensee: Alder Creek Kayak and Canoe, an ABN of Alder Creek Kayak Supply, Inc., an Oregon corporation
200 NE Tomahawk Island Dr.
Portland, OR 97217

CITY: City of Lake Oswego
Mail: PO Box 369, Lake Oswego OR 97034

1. Grant of Right to Use Facility. CITY hereby permits and authorizes Licensee, its agents, customers, and employees to enter upon and use the below Facility and related area:
 - a. George Rogers Park, at 611 S. State Street, as illustrated in Exhibit A.

For the purposes described herein, subject to the limitations set forth below. Unless public occupancy interferes with or creates a danger to Licensee, Licensee's employees, invitees, customers, class attendees, or to the public, Licensee's use shall be non-exclusive, because the purpose of the licensed area is to be mutually beneficial to Licensee and to the residents and visitors of Lake Oswego.

2. Purpose; Use of Facility and Related Area. Licensee may use the respective Facility and related area only for the following purpose(s): See Exhibit B. Other instructional and recreational uses shall be granted or agreed upon through written approval of the City Parks and Recreation Director.
3. Licensee shall use reasonable care to conduct its activities upon the Facility and related area in such a manner so as not to interfere with CITY's activities. Licensee acknowledges that construction or City activities may occur at the Facility from time to time. City will notify Licensee not less than 7 days prior to commencement of construction work or City activities that would reasonably foreseeably interfere with Licensee's activities, and shall provide an estimated schedule of construction / activities. Licensee shall accommodate its activities so as not to interfere with the construction work or City activities.
4. Covenants and Representations of Relating to Use of Facility and Related Area; Obligations of Parties.
 - A. Special Restrictions / Obligations of the Parties: See Exhibit B.
 - B. Upon termination of this Agreement, all of Licensee's equipment, fixtures, and other items shall be removed within 14 calendar days and the Facility and Related Area shall be returned to its original condition free from any damage by Licensee's activities, excepting:

- A. Reasonable wear and tear;
 - B. Damage by public; and
 - C. Attached fixtures consented to by City (which therefore remain as part of the Facility and Related Area).
- C. Compliance with Laws, Rules, and Policies.
- (1). Licensee will observe and abide by all the laws, rules and regulations imposed by any lawful governmental authority and relating in any way to any activity conducted on the premises, and shall require all of Licensee's agents, employees and agents upon the premises to do likewise.
 - (2). Licensee shall obtain all necessary state, federal and local permits as may be necessary for Licensee's use of the Agreement Area as set forth above, including any necessary health or business permits.
- D. Owing to the special faith and confidence which CITY reposes in Licensee, this Agreement shall be strictly personal to Licensee and shall not be transferable, assignable or otherwise alienable, or any interest therein, and in the event of any attempt to do so, at the option of CITY, CITY may terminate this Agreement without further notice.
- E. All risk of loss of Licensee's property shall be that of Licensee.
- F. Licensee certifies, acknowledges and agrees that access to and use of the Facility and related area is accepted and executed on the basis of Licensee's own examination and personal knowledge of the premises and personal property, if any, and Licensee's own opinion thereof; all prior negotiations, representations of fact or opinion or agreements relating to said property made by CITY or any agent thereof upon which Licensee may have relied have been reduced to writing and are included in this agreement, and if not so reduced to writing, are expressly waived, which waiver is a material part of the consideration of the execution of this contract by CITY. Further, Licensee acknowledges that the Licensed Area, except that part that is within the exclusive control of Licensee, is continually used by the public and, therefore, the City may have no knowledge of any change in condition. Accordingly, the covenant of examination and personal knowledge of the premises and personal property is ongoing upon the Licensee. If at any time the condition of the premises is unacceptable to Licensee, Licensee's sole remedy is to suspend its activities; City shall not be liable for any direct or consequently damages, including lost profits.
- G. CITY makes no warranties as to the condition of the premises or personal property, other than as set out herein. Licensee takes use of the Facility and related areas AS IS, in the condition existing at the time of commencement of use of the Facility and Related Area, and as stated in Section F above, and in the condition ongoing during the term of this License.
- H. This Agreement represents the full, entire and complete agreement of the parties. Any and all amendments to this Agreement shall be in writing and executed by Licensee and CITY.

- I. The Licensee shall defend, indemnify, and hold CITY, its officers, agents and employees, harmless against all liability, loss, or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission of an act sustained in any way in connection with the use of this Agreement (including by participants from any program offered by Licensee and not required to be offered by this Agreement) or by conditions created thereby, or based upon violation of any statute, ordinance or regulation. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification to CITY, but is in addition to such common law or statutory provisions.

To the extent permitted by law and to the limits of the Oregon Tort Claims Act, CITY shall defend, indemnify, and hold harmless Licensee and its employees, officers, servants, and agents against all claims, demands, and judgments (including attorneys' fees) made or recovered against them for damages to real or tangible personal property or for bodily injury or death to any person arising out of or in connection with this Agreement or arising from any programs offered by the City at the Facility, to the extent such damage, injury, or death is caused by the negligence or intentionally wrongful act or omission of CITY or its employees, officers, servants, or agents, or participants in programs that are not conducted by Licensee. CITY shall promptly notify Licensee in writing of any such claim or demand to indemnify and shall cooperate with Licensee in a reasonable manner to facilitate the defense of such claim.

- J. Licensee shall obtain upon execution of the Agreement, and shall maintain in full force and effect for the term of this Agreement, at Licensee's expense, a comprehensive general or commercial general liability policy for the protection of Licensee and CITY, its officers, agents, and employees. If the insurance policy is issued on a "claims made" basis, then Licensee shall continue to obtain and maintain coverage for not less than three years following the completion of the contract. The policy shall be issued by a company authorized to do business in the State of Oregon, protecting Licensee or anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, contractual liability, death and property damage, and any other losses or damages above mentioned with limits not less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate, or the limit of public liability contained in ORS 30.260 to 30.300, whichever is greater. The insurance company shall provide CITY with a certificate of insurance and an endorsement thereto naming CITY as an additional insured, providing that no acts on the part of the insured shall affect the coverage afforded to the above policy, and providing CITY will receive 30 days written notice of cancellation or material modification of the insurance contract.

Licensee shall obtain and maintain statutory workers compensation coverages for all subject employees, and shall provide a certificate of insurance to the City.

Licensee will not utilize the Agreement Area pursuant to the terms of this Agreement until the CITY has received certificates of insurance that the appropriate insurance heretofore mentioned is in force.

5. Consideration for Agreement; Real Property Tax Exemption. The consideration for this Agreement will follow the Fee Schedule (Exhibit B).

To the extent a portion of the money collected by CITY from Licensee activities is deemed to be for Licensee's occupancy of the Facility, that amount is below the market rate for the right of occupancy of the Facility and reflects Licensee's exemption from real property taxation pursuant to ORS Ch. 307. It shall be the obligation of Licensee to file for and obtain real property taxation exemption from the county assessor pursuant to ORS 307.166.

6. Term of Agreement / Termination. This Agreement shall commence upon execution and remain in effect until the earlier of:

A. Three years from the date issued. City may elect to renew this Agreement upon the same terms and conditions for three additional one year periods. Renewal shall occur automatically, unless notice is given by City to the Contractor not less than 60 days prior to the completion date stated above, and the same date of each year thereafter for which the Agreement is renewed.

B. A determination by the Parks and Recreation Director that the public interest requires use of the Facility and Related Area, provided however, that CITY shall provide not less than 120 calendar days' notice of such determination prior to termination.

C. A determination by the Parks and Recreation Director that the Licensee has violated a material provision of this Agreement, provided however Licensee shall have a period of seven (7) days after written notice of violation is given to effect a cure to CITY's reasonable satisfaction, or if the violation is such that it cannot be reasonably cured within seven (7) days, Licensee shall provide evidence to CITY that Licensee has commenced and will diligently continue efforts to completion to cure the violation; in such event, this Agreement shall continue.

D. Licensee becomes insolvent or files for bankruptcy, effective upon delivery of notice to Licensee, or other such effective date as CITY shall state in the notice.

E. Licensee's written notice of termination, which shall provide not less than 30 days' notice.

7. Any notice to be given by mail, email, or personal delivery by one party to the other as follows:

A. To Licensee: Any of the following: the address and person stated in Licensee's Business Permit Application, the person named as the Registered Agent and to the mailing address for such person as shown in the records of the Oregon Secretary of State, Business Name Records; or the name and address stated above.

B. To CITY: Director of Parks and Recreation, at the address stated above.

Any notice mailed shall be deemed delivered to the addressee 48 hours after depositing the notice in the US Post Office, Lake Oswego Branch. Any notice emailed to the other shall not be deemed received until a confirmation of receipt is sent by return email.

8. Construction. In construing this Agreement, the singular may include the plural, and vice versa, the masculine may include the feminine and neuter, and vice versa, if the context so requires, and generally all grammatical changes shall be made, assumed or implied to make the provisions hereof applicable to corporations as to individuals and as necessary to carry out the intent of the parties.

IN WITNESS WHEREOF, the undersigned have hereunto executed this Agreement, which includes the attached Exhibits A-, on the date stated below.

CITY: City of Lake Oswego

Licensee: Alder Creek Kayak and Canoe, an ABN of Alder Creek Kayak Supply, Inc., an Oregon corporation

By: _____

Scott Lazenby,

City Manager

Date Signed: _____

Date Approved by Council: _____

By: _____

Name: _____

Date Signed: _____

Approved as to Form:

Evan P. Boone

Deputy City Attorney

Walking Path

Temporary pod/trailer location

611 S State St



Exhibit B – License and Programming Agreement

1. **Equipment and Supplies:** Licensee may place, at its own expense, the following Licensee equipment and supplies:
 - a. George Rogers Park:
 - (1). Movable signage, comparable to a "lawn sign", to put out during business hours and remove when closed, as shown on Exhibit A.
 - (2). Equipment for class/rental:
 - ii. 32 SUP boards
 - iv. 32 single kayaks
2. **Use: The Facility and respective licensed area shall be for the following uses:**
 - a. Rentals. Kayak and SUP rentals (watercraft).
 - b. Retail sales related to rentals, such as: Sunscreen and Lip Balm.
 - c. Classes and Camps
 - d. Any other use authorized by the Director of Parks and Recreation.
3. **Dates of Use:** The period that Licensee may use and conduct its activities upon the licensed area are:
 - a. George Rogers Park: all weekends, and weekdays during the period starting May through September.Additional dates of use may be authorized by the Director of Parks and Recreation, i.e., winter clinics, first aid and CPR classes and other outdoor related activities and services.
4. **Licensee Obligations:**
 - a. Generally
 - (1). Provide and maintain CPR/first aid, BCU and/ACA trained staff on site for all programs.
 - (2). Provide canoe with an outboard motor for Licensee to respond to lost, tired, and late paddlers who are customers of or class attendees of Licensee.
 - (3). Provide whistles, Coast Guard-required personal flotation devices (PFD) and paddles for all of Licensee's watercraft.
 - (4). Local river maps of the paddling options on the water.
 - (5). Watercraft will obtain, maintain, and display as required invasive species tags and Coast Guard certification tags.
 - (6). All classes offered by Licensee shall be by a Class Amendment executed by Licensee and City, for the class periods during the term of this License. See Exhibit D.
 - i. Licensee shall register the classes with City Park staff and provide applicable class description, dates, times, locations, etc.
 - ii. Classes shall be offered according to the following schedule: Fall catalogue, Winter/Spring catalogue, Summer catalogue.
 - iii. Activity Registration for classes/offerings will occur according to the then current City Parks and Recreation's Activity Registration General Information. Licensee will follow the policies and procedures detailed in the then current City Parks and Recreation's Activity Registration Policies and Procedures.

- (7). Class Registration:
 - i. Handle all participant registration and, when applicable, cancellations and or refund of registrations.
 - ii. Submit monthly reporting of participant numbers, revenue taken in, rentals, and retail.
 - iii. City will invoice the contractor first of each calendar month. Fees and monies due will be paid by Licensee on the 10th of each month by check payable to the City of Lake Oswego, and delivered to the City of Lake Oswego Parks and Recreation Department.
- (8). Licensee shall take reasonable care in ensure that any person that is an instructor or other program leader has not been convicted of any Prohibited Offense listed on Exhibit C, except as approved in writing by the Director of Parks and Recreation.
- (9). Inspection of Sales Records. Upon 3 business days' request, Licensee shall make available its sales records for all classes, programs, and rentals during at least the prior 12 month period for inspection by City personnel, to verify the accuracy of Licensee's reports.
- (10). General cleanup and maintenance of Licensee's equipment and interior premises (if any).

5. City Obligations:

- a. Generally
 - (1). Provide a key for access / gate, if needed.
 - (2). Provide ongoing clean-up maintenance when needed.
 - (3). Advertise all Licensee's class information in all regular City Parks and Recreation class offering publications, including but not limited to Fall catalogue, Winter/Spring catalogue, Summer catalogue.
 - (4). Promote classes, kid camps, etc. periodically through means that the City uses to advertise Parks and Recreation programs, including but not limited to print material e.g. the Lake Oswego Review, Hello LO, and online marketing e.g. the City website, social networking platforms.
 - (5). Provide contact information to Licensee for:
 - i. Parks Maintenance: for park issues or clean-up.
 - ii. Outdoor programming
 - iii. Publications and Marketing
 - (6). Responsible for payment of electrical power bill.
- b. George Rogers Park.
 - (1). Clear out a space for Alder Creek's storage trailer or 20' shipping container at George Rogers Park at the bottom of the access road to the water.

6. Licensee's Pricing of Classes, Programs, and Rentals:

The prices for classes, programs, and rentals offered at the Facility shall not be greater than for such classes offered at any other location by Licensee. (At the time of execution of this License, Licensee's website had descriptions and prices for these offerings: <http://aldercreek.com/learn-to-kayak-canoe-and-sup/>, At the time of execution of this License, Licensee intended to offer SUP Yoga, a 2 hour class for \$50 with SUP board and instructor; \$25 for instruction with own board.

7. Consideration

As consideration for Licensee's use of the Licensed Area, Licensee shall pay to City the following percentages upon:

- i. 10% on all Rentals or Retail sales.
- ii. 17% on all (on-site) Classes/Tour/Camps.