

CITY OF LONGVIEW
Parks and Recreation Department

AGREEMENT GOVERNING THE OPERATION OF
NON- MOTORIZED BOAT CONCESSION IN
LAKE SACAJAWEA
LONGVIEW, WASHINGTON

THIS AGREEMENT is between the City of Longview, Washington, hereinafter referred to as “CITY,” and “Paddle Flatts”, hereinafter referred to as “CONCESSIONAIRE,”

WHEREAS, The CITY has a need for an independent contractor to operate non-motorized boat concessions in Lake Sacajawea Park; and

WHEREAS, CONCESSIONAIRE warrants that it has the necessary qualifications to operate such concessions and has provided a proposal acceptable to the CITY.

NOW, THEREFORE, the CITY and CONCESSIONAIRE agree as follows.

A. The CONCESSIONAIRE shall operate a small boat rental concession from a staging area located in the Martin’s Dock area at the City’s Lake Sacajawea Park (“the Lake”), through which the CONCESSIONAIRE shall rent small boats such as kayaks, and paddle board kayaks, as well as fishing equipment rentals at the Lake.

B. The CITY has determined that the small boat rental concession proposed by the CONCESSIONAIRE is beneficial to Longview residents and businesses, and promotes tourism within Longview.

In consideration of the mutual covenants set forth below, the parties agree as follows:

1. GRANT OF USE

The CITY grants to the CONCESSIONAIRE a permit for the term of this Agreement, the exclusive concession, right and privilege to operate boat tours and provide other services at the City’s Lake Sacajawea Park, subject to the terms and conditions set forth in this Agreement.

2. TERM OF AGREEMENT

This Agreement shall be for a term during 2015, commencing on June 13, 2015 and ending on September 30, 2015. CITY shall have the right to terminate this Agreement with 30 days’ advance written notice.

3. PAYMENTS TO CITY

CONCESSIONAIRE shall pay to the CITY Two and 00/100 Dollars (\$2.00) per person for each boat rental or tour and shall be paid by the tenth (10th) day of each month, for services during the preceding month, beginning July 10, 2015.

4. APPROVED SERVICES

- A. The CONCESSIONAIRE shall provide kayaks, stand-up paddleboards, and such other boats or equipment as the CITY shall approve and provide (2) guided boat trips around the Lake, in such boats and on such routes as the CITY may approve, and (3) boating instruction to the public, through qualified instructors.
- B. Kayaks shall be seal launched from the shore (beach or ground launch).
- C. The designated concession operation location (area) will be in the Martin's Dock area of Lake Sacajawea Park with the specific place/space to be determined by the CITY. The CITY reserves the right to move the location during special or community events.
- D. Any fees charged by the CONCESSIONAIRE for the authorized services shall be competitive with fees charged by similar service providers and approved by the Parks and Recreation Director.

5. HOURS/DATES OF OPERATION

A. REGULAR OPERATING HOURS

CONCESSIONAIRE shall operate and transact business with the public every Saturday starting June 13 through September 26 (excluding June 20 and August 15). The Saturday operational hours will be from 12:00p.m. until 8:00p.m. Additionally, the CONCESSIONAIRE will operate on Thursday nights during the summer concert series for six weeks starting on July 9. The hours and days of operation may be modified by a request from the CONCESSIONAIRE and approval by the Parks & Recreation Director. Hours shall be posted on the concession premises so as to be easily viewed by the public at all times.

B. TOUR RESERVATIONS

CONCESSIONAIRE will provide a calendar of availability to be approved by the CITY to make tours accessible to the community by reservation.

C. SPECIAL EVENT HOURS

The CONCESSIONAIRE will open for operation by mutual agreement of the CONCESSIONAIRE and CITY when there is a special event, or other times as requested by the Parks and Recreation Department. When park attendance at a special event is expected to reach high numbers, in the best interest of both the CITY and the park patrons, the CITY reserves the right to contract additional concessionaires to accommodate the number of patrons. The CITY reserves the right to restrict the CONCESSIONAIRE and not allow operation during a park special event, based on the type and nature of the event. The CITY reserves the right to modify the location, hours and dates of operation due to community events.

D. EXCLUSION OF PERMIT

CONCESSIONAIRE shall not be present or conduct any of the operations contemplated by this agreement during the Go-4th celebration unless prior arrangements are made with and approval granted by the Go 4th Organization.

6. EQUIPMENT

A. BOATS

CONCESSIONAIRE shall supply and maintain in a safe condition for public kayaks, tandem kayaks, stand-up paddleboards, and such other boats approved by the CITY. The number of kayaks will vary depending on tour demand and need.

B. ACCESSORY EQUIPMENT

CONCESSIONAIRE shall also provide and maintain in a safe condition the following boat accessory equipment for every person on tour:

Approved Personal Flotation Device (PFD)

Paddles

Whistles

Required Safety Equipment

All Concessionaire-owned equipment shall be removed from Lake Sacajawea Park each evening with the park grounds in the boat rental area left in the same or better condition.

7. SAFETY AND EMERGENCY SERVICE

A. CONCESSIONAIRE staff shall be trained in CPR/first aid and the site shall be equipped with basic first aid equipment at all times.

B. CONCESSIONAIRE shall provide a safety plan prior to operation which meets CITY approval.

C. CONCESSIONAIRE shall provide safety instruction prior to groups or individuals launching (to include boat safety, rights of anglers, avoiding water hazards)

In addition:

- Youth 15 years or younger are to have adult supervision
- All youth under 18 years need an adult present to sign the liability waiver
- No youth under 6 years shall leave the shore unless accompanied by an adult with boating experience depending on the type of boat used (single or tandem)
- PFD (lifejackets) are required to be worn at all times by every boater
- No person shall be allowed to rent a boat if a lifejacket does not properly fit
- A first aid kit is to be available on site provided by the vendor
- Kayaks are not to exceed the maximum manufacture capacity limit (weight & seating capacity)
- CONCESSIONAIRE is to have a working cell phone on site available at all times
- No bumping into other boats is allowed
- CONCESSIONAIRE has the right to refuse service to a renter(s) who may be under the influence of drugs or alcohol
- Rentals are to be discontinued during hazardous weather conditions (lightening or dangerous conditions)

8. STAFFING

CONCESSIONAIRE shall employ personnel in such numbers, skills and experience as necessary to properly conduct the activities under this Agreement. CONCESSIONAIRE shall have on the premises, at all times that the CONCESSIONAIRE is open for business, a qualified representative authorized to represent the CONCESSIONAIRE.

9. ADVERTISEMENT AND SIGNS

The CONCESSIONAIRE shall, at its own expense, promote and encourage the use of boats and the other services authorized under this Agreement, and shall provide and install on the Concession Premises a sign approved by the CITY indicating that boat tours and other services are available. All of the CONCESSIONAIRE's signs, literature and advertising shall identify the City's boat rental area as being publicly owned and operated as a public

outdoor recreation facility, and shall indicate that the CONCESSIONAIRE is a CONCESSIONAIRE so that the public is not misled into believing that the area is private.

10. VOICE MESSAGE SYSTEM

The CONCESSIONAIRE shall have a voice message system to receive incoming telephone calls during non-operating hours and to provide the public with information regarding the boat tours and other services authorized under this Agreement.

11. NO NUISANCES

The CONCESSIONAIRE shall not permit any excessive or objectionable noise, odor, dust, vibration, or similar substance or condition to remain on or be emitted from the Concession Premises. The CONCESSIONAIRE shall not interfere with access to or from the boat rental area or any part thereof, and shall not create any nuisance in or adjacent to the Concession Premises or the boat rental area.

12. NO MOTORIZED VEHICLES

No motor vehicles allowed in the park. Equipment is to be moved into the designated park area with non-motorized carts, dolly or hand carried. No motorized boats are allowed.

13. CAPITAL IMPROVEMENTS

The CONCESSIONAIRE is not to make any improvements, alterations or additions to the Concession Premises without written approval from the Director of Parks and Recreation.

14. DISCLAIMER OF CONDITION OF BOAT RENTAL AREA

The CITY disclaims all representations, statements, and warranties, express or implied, with respect to the condition of the boat rental area or the use and occupancy of the boat rental area authorized, other than those contained in this Agreement. The CONCESSIONAIRE accepts the boat rental area in its condition on the effective date of this Agreement.

15. LIENS AND ENCUMBRANCES

The CONCESSIONAIRE shall keep the Concession Premises and the boat rental area free and clear of any liens and encumbrances. At the request of the CITY, the CONCESSIONAIRE shall deliver to the CITY written proof of the payment of any item which could be the basis of such a lien, if not paid.

16. MAINTENANCE AND REPAIR

The CONCESSIONAIRE, at its sole cost and expense, shall keep and maintain the Concession Premises, in a neat and sanitary condition in accordance with all applicable State and local public health standards. The CONCESSIONAIRE shall preserve the Concession Premises and all equipment in good condition to avoid discouraging public use. The CONCESSIONAIRE shall maintain the Concession Premises in a condition that is attractive and inviting to the public, as determined by the CITY.

17. BOOKS AND RECORDS

The CONCESSIONAIRE shall maintain separate, accurate, and auditable books and records, and shall maintain an accounting system having controls governing inventories and receipts, and detailed records of all income and expenses of all business generating gross receipts

under this Agreement. All of the CONCESSIONAIRE's books, records and accounting systems shall be subject to the approval of the CITY. The CITY shall have the right to inspect all such books, records and accounting systems. The CONCESSIONAIRE shall retain for at least fifteen (15) months after the close of any fiscal year of the CONCESSIONAIRE, copies of all rental or sales checks or receipts issued, and analogous and collateral supporting data regarding the CONCESSIONAIRE's gross receipts during such fiscal year.

18. AUDIT

The CONCESSIONAIRE shall permit the CITY, as the CITY deems necessary, to inspect and audit all of the CONCESSIONAIRE's books and records relating to any business activities in, on, or from the Concession Premises. At the CITY's request, the CONCESSIONAIRE shall supply the CITY with, or permit the CITY to make, a copy of all such books and records.

19. INDEMNITY

The CONCESSIONAIRE agrees to indemnify and hold the CITY harmless from and against any loss, liabilities, claims, demands or causes of action (including any costs and attorneys' fees incidental to the defense thereof by the CITY), for deaths or injuries to persons or damage to property sustained by the CITY, its officers, employees, or agents, or any other person or entity, arising out of or resulting from the operation of the concession business authorized in this Agreement, any occurrence in or on the Concession Premises, or the CONCESSIONAIRE's performance or lack of performance under this Agreement, except for loss, liabilities, claims, demands or causes of action caused solely by the negligence or willful misconduct of the CITY. If any action or proceeding is brought against the CITY by reason of such claim, the CONCESSIONAIRE upon notice from the CITY, shall defend the same at CONCESSIONAIRE's expense through legal counsel reasonably satisfactory to the CITY. The CONCESSIONAIRE shall give to the CITY prompt notice in the event of casualty or accidents involving the premises. In the event that any final judgment shall be adverse to the CITY, or the CITY and the CONCESSIONAIRE jointly, the CONCESSIONAIRE shall promptly satisfy the same. The CONCESSIONAIRE's indemnity of the CITY shall survive the termination of this Agreement.

20. INSURANCE

During the full term of this Agreement, the CONCESSIONAIRE shall secure and maintain, at its sole expense, insurance as follows:

- A. A general comprehensive policy of liability insurance, with liability limits of at least one million dollars (\$1,000,000.00) for bodily injury and one three hundred thousand dollars (\$300,000.00) for property damage per occurrence and two million dollars (\$2,000,000.00) aggregate; provided, that in the event the CITY deems such insurance to be inadequate to fully protect the CONCESSIONAIRE and the CITY, the CONCESSIONAIRE shall increase said liability limits to such amounts as CITY deems reasonably adequate to provide protection, which increase shall be completed within sixty (60) days after the date of notice that the CONCESSIONAIRE's insurance is deemed to be inadequate.

- B. Coverage shall include, but need not be limited to, premises operations liability, blanket contractual liability, broad form property damage, independent contractor, products and/or completed operations, and personal injury.
- C. The CITY shall be named as an additional insured on each insurance policy required above. The CONCESSIONAIRE shall provide to the CITY a Certificate of Insurance, evidencing the required insurance, within ten (10) business days of the date of this Agreement.
- D. COMPLIANCE WITH LAW
 - a) General Requirement. The CONCESSIONAIRE, at its sole cost and expense, shall perform and comply with all applicable federal and state laws, regulations, and rules, and all City ordinances and other laws.
 - b) Licenses and Similar Authorizations. The CONCESSIONAIRE shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits, and similar legal authorizations, and shall comply with all requirements thereof.
 - c) Taxes. The CONCESSIONAIRE shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Concession Premises, including, but not limited to, taxes arising out of the activity or business conducted on the premises, taxes levied on its property and equipment on the Concession Premises.
 - d) Nondiscrimination. The CONCESSIONAIRE agrees to comply with all state and local laws prohibiting discrimination with regard to race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap.

21. CITY'S ACCESS TO PREMISES

CONCESSIONAIRE shall provide the CITY access to the Concession Premises (boat operation area) at all reasonable times to inspect the same and to make any repair, improvement, alteration or addition to any property owned by or under the control of the CITY, but this right of access shall not impose on the CITY any obligation to make any repair, alteration, addition, or improvement.

21. ASSIGNMENT, TRANSFER OR SUBLEASE

The CONCESSIONAIRE shall not assign or transfer this Agreement or any rights under this Agreement, or sublease any part of the Concession Premises, without the prior written consent of the CITY. No right, privilege, or interest conferred in this Agreement shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Agreement or any rights, privilege, or interest be transferable by operation of law or proceeding of any court.

22. DEFAULT AND BREACH; TERMINATION

- 1. Act of Default and Breach by CONCESSIONAIRE. The following acts and omissions shall constitute a default and material breach of this Agreement by the CONCESSIONAIRE:
- 2. The failure to comply with all of the insurance requirements;
- 3. The violation of any law, charter provision, ordinance, rule, regulation, order, or directive;

4. The abandonment or vacating of the Concession Premises;
5. The repeated failure to perform or the violation of any single condition or covenant of this Agreement on two (2) or more occasions in any twelve (12) month period;
6. The assignment of the CONCESSIONAIRE's interest in this Agreement without the prior written consent of the CITY, the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement, the adjudication of the CONCESSIONAIRE as being bankrupt or insolvent, the appointment of a receiver of the CONCESSIONAIRE; or
7. The failure to perform or the violation of any other condition or covenant of this Agreement, where such default or deficiency in performance was not remedied within a reasonable time.
8. CITY's Notice of Default and Breach. If the CONCESSIONAIRE commits any act or omission specified above, the CITY shall provide written notice to the CONCESSIONAIRE stating the nature of the act or omission, the number of days (which shall be a reasonable time not to exceed thirty (30) days after the date of the notice) within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the CITY's intent to terminate this Agreement if the act or omission is not corrected within the stated time.
9. Remedies On Termination. If the CONCESSIONAIRE fails to correct, remedy, or cease the failure or violation within the time stated in the CITY's notice, the CITY may terminate this Agreement without any further proceedings, lease and license others to use the boat dock and conduct the business authorized by this Agreement during any portion of the term remaining under this Agreement had it not been terminated.

23. SURRENDER OF PREMISES

1. Removal of CONCESSIONAIRE's Property:

Immediately following after the expiration or termination date of this Agreement, whichever is applicable, the CONCESSIONAIRE shall remove the Concession Premises and all of the CONCESSIONAIRE's personal property from the boat staging area. Improvements, additions, and alterations installed on the boat rental area by the CONCESSIONAIRE or the CITY shall not be removed, but shall be the CITY's property.

2. Storage of CONCESSIONAIRE's Property:

If the CONCESSIONAIRE fails to remove all property required to be removed under Paragraph 17.1, the CITY may, but is not required to, remove and store such property, at the CONCESSIONAIRE's expense. If the CITY removes or stores such property, the CITY shall be reimbursed for any costs incurred, including any administrative costs.

24. NOTICES AND DELIVERABLE MATERIALS

All notices required under this Agreement shall be in writing. Except as specified in this Agreement, all notices and other material to be delivered under this Agreement shall be delivered or mailed, by first class mail, to the following addresses, or such other address as either party may designate in writing:

To City: Director, Parks and Recreation
City of Longview
2920 Douglas Street
Longview, WA 98632

To Concessionaire: Paddle Flatts
219 Rollingwood Drive
Kelso, WA 98626

25. NO RELATIONSHIP ESTABLISHED

The CITY shall in no event be deemed to be a partner, associate, or joint venture of the CONCESSIONAIRE. The CONCESSIONAIRE is not an agent of the CITY for any purpose whatsoever. The CONCESSIONAIRE shall not create any obligation or responsibility on behalf of the CITY or bind the CITY in any manner.

26. AMENDMENTS

No modifications or amendment of the terms of this Agreement shall be effective unless in writing and signed by the parties. The parties expressly reserve the right to modify this Agreement by mutual written agreement.

27. NO WAIVER

No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

28. JOINT AND SEVERAL LIABILITY

If the CONCESSIONAIRE is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the CONCESSIONAIRE shall be jointly and severally liable under this Agreement.

29. INVALIDITY OF PARTICULAR PROVISIONS

Should any term, provision, condition, or other portion of this Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

30. BINDING EFFECT

The terms and provisions of this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

31. ENTIRE AGREEMENT

This Agreement contains all of the covenants, promises, agreements, and conditions, either oral or written, between the parties with respect to the subject matter of this Agreement.

32. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

33. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

34. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Cowlitz County, Washington.

35. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by affixing their signatures below:

CITY OF LONGVIEW

By: _____ Date: _____
(Signature)

Dave Campbell, City Manager
P.O. Box 128
Longview WA 98632
(360) 442-5405

I certify that I am authorized to execute this Agreement on behalf of the CONCESSIONAIRE.

CONCESSIONAIRE

By: _____ Date: _____
(Signature)

By: _____ Date: _____
(Signature)

Business Name: Paddle Flatts Kayaking LLC
Business Owners: Lorayne Horner and Earl Grubb
Address: 219 Rollingwood Drive
Kelso, WA 98626
Email: paddleflattskayaking@gmail.com
Phone: (360) 751-7966

APPROVED AS TO FORM:

City Attorney: _____ Date: _____