

ORDINANCE NO. 2016- 33

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH KENT STATE UNIVERSITY CROOKED RIVER ADVENTURES TO OPERATE A CANOE/KAYAK LIVERY AT JOHN BROWN TANNERY PARK, FOR THE PERIOD OF MAY 1, 2016 THROUGH OCTOBER 31, 2016, RESERVING THE RIGHT TO EXTEND SAID AGREEMENT FOR TWO ONE YEAR SEASON (2017 AND 2018), FOR THE AMOUNT OF \$200 MONTHLY; \$100 MONTHLY FOR ELECTRIC; AND FIVE PERCENT (5%) OF THE GROSS SALES OF ALL ITEMS SOLD AS PART OF THE LIVERY OPERATION, AND DECLARING AN EMERGENCY.

WHEREAS, the Kent Parks and Recreation Department wish to enter into an agreement with Kent State University Crooked River Adventures for the operation of a canoe/kayak livery at the John Brown Tannery Park; and

WHEREAS, the canoe/kayak season will be starting soon, so time is of the essence.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That the City Manager, or his designee, be and hereby is authorized to enter into an agreement with Kent State University Crooked River Adventures to operate a canoe/kayak livery at John Brown Tannery Park, in substantial compliance with the terms of Exhibit "A", attached hereto.

SECTION 2 That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 04/20/2016 _____
DATE MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016- 33 was duly enacted this 20th day of April, 2016, by the Council of the City of Kent, Ohio.

CLERK OF COUNCIL

JOHN BROWN TANNERY CANOE LIVERY LEASE

This AGREEMENT is entered into this _____, 2013 by and between KENT PARKS & RECREATION DEPARTMENT, hereinafter referred to as "Lessor", and Kent State University Crooked River Adventures, hereinafter called "Lessee".

The Lessor and the Lessee, for the consideration specified, agree as follows:

Article 1 - General

- 1.1** The Lessee shall perform the services described in the Contract Documents consisting of providing bicycle, boat shuttle, inner tube rental, kayak and canoe livery operations at John Brown Tannery Park. The Lessee shall also be permitted to sell packaged food concessions. Attached is a copy of the 2013 fees.
- 1.2** The Lessee agrees to operate the livery as outlined in the November 16, 2012 proposal.

Article 2 - Contract Term

- 2.1** Work under this Contract will commence on April 1, 2013 and ending October 31, 2013 both dates inclusive, unless earlier terminated, as hereinafter provided. The city reserves the right to extend this contract for up to two one year seasons (2014 and 2015).

Article 3 - Contract Amount

- 3.1** The Lessee shall pay rent in the amount of \$150.00 per month. The total rent due under this contract shall be \$1,050.00.
- 3.2** The Lessee shall pay the Lessor five percent (5%) of the gross sales of all items sold as part of this livery operation no later than the 15th of the following month.
- 3.3** The Lessee shall pay the Lessor \$100 per month for use of electric service. The total amount for electric service is \$700.
- 3.4** All payments shall be payable at the Kent Parks & Recreation Main Office located at 497 Middlebury Road, Kent, Ohio.
- 3.5** Any payments made after the 15th day of the following month shall accrue interest at ten percent (10%) per annum from the date it was due until the date it is paid.

Article 4 - Livery Operations

- 4.1** The Lessee shall provide upon request the Lessor with Daily Revenue Reports to include a duplicate copy of all cash register receipts of sales, on a weekly basis.
- 4.2** Lessee shall operate Livery Trips and Fee Structure as outlined in the proposal submitted on November 16, 2012 (attached hereto as Exhibit "A" and made a part hereof). Lessee shall submit any changes to this plan to Lessor prior to implementation for approval. Lessee shall submit an item and price list for any proposed concession items. Lessor reserves the right to reject any items it determines to be inappropriate for sale.

Article 5 - Use of Premises

- 5.1** The premises shall be used for livery and concession business operations by the Lessee.
- 5.2** The Lessee shall be permitted to park, at Lessee's expense and risk, a Storage Cargo Trailer. Trailer shall be removed with thirty days of expiration of this lease. Trailer shall be for the exclusive use and owned by the Lessee. Location of trailer to be determined by Kent Parks & Recreation.

5.3 The Lessee shall be permitted to install a temporary sign at the park entrance. Size and style of sign shall be approved by Lessor and shall be removed at the expiration of this Lease. Sign must conform to the City of Kent Sign Regulations.

Article 6 - Taxes

6.1 The Lessor shall be responsible for payment of all local, state, and federal taxes that are applicable as a result of the livery and concession stand operation.

Article 7 - Theft and Vandalism

7.1 Each party shall be responsible for their own property, and for any losses and/or damages sustained as a result of theft or vandalism.

Article 8 - Repair of Premises

8.1 Lessor at all times, and at its cost, shall keep and maintain the Demised Premises in a good state of repair, all to the reasonable satisfaction of Lessee, except for loss by fire or other casualty. Lessee shall not do any acts which damage the premises. If Lessee or its employees cause damage to the premises, it shall be Lessee's responsibility to repair said damage areas.

Article 9 - Insurance

9.1 The Lessee shall provide the City of Kent with a Certificate of Liability Insurance naming the City as an additional insured in the amount of \$1 Million per occurrence and \$2 Million aggregate and sufficient to meet the City of Kent's insurance carrier standards (attached hereto as Exhibit "B" and made a part hereof).

Article 10 - Indemnity of Lessor

10.1 As a public institution Lessee is subject to the laws of the State of Ohio, including without limitation the Ohio Constitution and applicable sections of the Ohio Revised Code. As such, (i) to the extent permitted by Ohio law, Lessee agrees to be liable for the acts and omission of its officers, employees and agents engaged in the scope of their employment arising under this Agreement, and (ii) specifically, in lieu of Lessee's obligation to indemnify Lessor under this Agreement, Lessee hereby agrees to be responsible for any and all liability, claims, costs, expenses or damages arising from any claim with respect to Lessee's role in connection with this Agreement.

Article 11 - Compliance with Laws and Ordinances

11.1 Lessee shall comply with all federal, state, county, and city laws and ordinances, and rules and regulations of any duly constituted authority, affecting or respecting the Demised Premises, or the use or occupancy of same.

Article 12 – Assignment and Sub-Letting

12.1 Lessee shall not, except with the prior written consent of Lessor, which consent will be withheld for reasonable cause, during the terms of this Lease, or any renewal or extension hereof, assign this Lease, or its rights hereunder, or sublet all or part of the Demised Premises. In any event, Lessee shall remain liable for the payment of all rent required to be paid hereunder and for the performance of all of the terms, covenants and conditions undertaken by Lessee.

Article 13 - Covenant of Title

13.1 Lessor assures Lessee that Lessor has full right and lawful authority to enter into this Lease for the term of this Lease, or any renewal or extension hereof.

Article 14 - Lessor's Right of Re-Entry

14.1 Lessee covenants and agrees with Lessor that any one or more of the following events shall be considered events of default as said term is used herein:

- (a) Lessee shall make assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Lessee; or
- (b) A decree or order appointing a receiver of the property of Lessee shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or
- (c) Lessee shall vacate the Demised Premises or abandon the same during the term hereof; or
- (d) Lessee shall default in payment of rent by not delivering same for ten (10) days after due and not correcting such default within five (5) days after receipt of notice of such default in writing; or
- (e) Lessee shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Lessee, and such default shall continue twenty (20) days after notice thereof in writing to Lessee.

Upon the occurrence of one or more of such events of default, it shall be lawful for Lessor, at its election, to declare the said term ended and the said Demised Premises and the buildings and improvements then situated thereon, or part thereof, either with or without process of law, to re-enter, and eject Lessee and all persons occupying the same under it and, remove and put out, and regain possession of said premises and the buildings and improvements then situated thereon and again to repossess and enjoy, without such re-entry and repossessions working a forfeiture of the rents to be paid and the covenants to be performed by Lessee during the full term of this agreement. If default shall be made in any covenant, agreement, condition or undertaking herein contained to be kept, observed and performed by Lessee, other than the payment of rent as herein provided, which cannot with due diligence be cured within a period of twenty (20) days and if notice thereof in writing shall have been given to Lessee, and if Lessee, prior to the expiration of twenty (20) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure such default, then Lessor shall not have the right to declare said term ended by reason of such default; provided, however, that the curing of default in such manner shall not be construed to limit or restrict the right of Lessor to declare said term ended and enforce all of its rights and remedies hereunder for any other default not so cured.

Article 15 - Holding Over

15.1 In the event Lessee shall continue to occupy the Demised Premises after the last day of the term hereby created, or after the last day of any renewal or extension of said term, and Lessor shall elect to accept rent thereafter, only a month-to-month tenancy shall be created.

Article 16 - Utilities and Services

16.1 There is currently no water service available at this park.

16.2 Lessor shall furnish a port-a-pot temporary restroom facility in the park during the term of this Lease.

Article 17 - Lessee's Right to Perform

17.1 If Lessor fails to make repairs or do any work required by Lessor by the provisions of this Lease, or in other respect fails to perform covenants or agreements in this Lease contained on the part of Lessor to be performed, then and in such event after the continuance of such failure or default for thirty (30) days after notice in writing thereof is given by Lessee to Lessor, Lessee may cure such defaults, all on behalf of, and at the expense of, Lessor; provided, however, that Lessee shall have the right to remedy such default without notice in the event of an emergency. Lessee may further do all necessary work and make all necessary payments in connection therewith, including, but not limited to, the payment of attorneys fees, costs and charges of or in connection with legal action which may reasonable have been brought. Lessor shall pay to Lessee forthwith an amount so paid by Lessee.

Article 18 – Access to Premises

18.1 Lessor, agents, employees, officers and independent contractors of Lessor, shall have access to the Demised Premises at all reasonable times during business hours for the purpose of inspecting and maintaining same. Except in emergencies, Lessor shall give Lessee twenty-four (24) hours notice prior to entering premises to make repairs or alterations.

Article 19 – Governing Law

19.1 This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

Article 20 – Grammatical Usage

20.1 In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

Article 21 – Successors and Assigns

21.1 All warranties, covenants and agreements herein shall inure to the benefit of, and be binding upon, the heirs, devisees, executors, administrators, successors and assigns of Lessor and Lessee.

Article 22 – Entire Agreement

22.1 This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the extent permitted by law.

Article 23 – Service of Notice

23.1 Whenever under this Lease, or under any statute or ordinance, provision is made for notice of any kind, it shall be deemed a sufficient notice and service thereof if the said notice to the Lessee is in writing, addressed to the last known post office address of the Lessee or addressed to the Demised Premises and deposited in the mail. Notice to the Lessor shall be deemed sufficient notice and service thereof if the notice is sent by Certified Mail to the address where the last rental payment was made. Notice need be sent to only one Lessee where the Lessee consists of more than one person.

Article 24 – Harmony and Cooperation

24.1 It is mutually agreed that the parties will cooperate and work to provide a harmonious relationship during the tenancy of Lessee; the beginning rentals, being favorably competitive and advantageous to Lessee, represent the good faith of Lessor toward establishment of an equitable business relationship with Lessee.

Witnesses:

LESSOR:
CITY OF KENT
PARKS & RECREATION

By _____
John Idone, P & R Director
497 Middlebury Road
Kent, OH 44240

Witnesses:

LESSEE:

By _____

By _____