

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20061331

1. ACTION REQUESTED/PURPOSE: Approve license agreement between Baywatch Adventure Kayaks, Inc. and Lee County for use of Bunche Beach Regional Park as a kayak rental site. The agreement will be for one year with a one year renewal option.

2. WHAT ACTION ACCOMPLISHES: Allows rental kayaks for visitors to Bunche Beach Regional Park.

3. MANAGEMENT RECOMMENDATION: Recommend approval.

| | | |
|--|---|--|
| 4. Departmental Category: <u> CIB </u> | | 5. Meeting Date: 10/24/06 |
| 6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On | 7. Requirement/Purpose: (specify) | |
| | <input type="checkbox"/> Statute | <input type="checkbox"/> Ordinance |
| | <input type="checkbox"/> Admin. Code | <input type="checkbox"/> Other |
| | <input checked="" type="checkbox"/> Other | |
| | | |
| | | 8. Request Initiated: Commissioner _____ Department <u> Parks and Recreation </u> Division _____ By: <u> John Yarbrough </u> <i>John Yarbrough</i> |

9. Background:
 Baywatch Adventure Kayaks, Inc. has requested permission to use Bunche Beach Regional Park as a site to provide rental kayaks to park visitors. This recreational opportunity will compliment the use of the park and preserve and help with the promotion of low ecological impact recreation. Baywatch Adventure Kayaks, Inc. will pay monthly rent in the amount of \$40 for the duration of the lease agreement.

No funding is required.

10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|--------------------------|-------------------|----------------|----------------|----------------|------------------------------|
| | | | | | Analyst | Risk | Grants | Mgr. | |
| <i>JY 10-25-06</i> | | | | <i>W. J. ... 10/5/06</i> | <i>CA 10/6/06</i> | <i>10/6/06</i> | <i>10/6/06</i> | <i>10/6/06</i> | <i>[Signature]</i> |

11. Commission Action:

Approved
 Deferred
 Denied
 Other

RECEIVED BY COUNTY ADMIN *CA*
 10/6/06 11:40 AM
 COUNTY ADMIN FORWARDED TO: *[Signature]*
 10/9/06
 10:30 AM

Rec. by CoAtty
 Date: 10/6/06
 Time: 8:30 AM
 forwarded to:
 9:40 CAD

LICENSE AGREEMENT BETWEEN LEE COUNTY BAYWATCH ADVENTURE KAYAKS, INC. FOR THE OPERATION OF KAYAK RENTALS AT BUNCHE BEACH

This LICENSE AGREEMENT is made this 2 day of OCTOBER, 2006 by and between Lee County, a political subdivision and Charter County of the State of Florida, by and through its Department of Parks and Recreation, located at 3410 Palm Beach Boulevard, Fort Myers, Florida 33916, hereinafter referred to as "COUNTY" and BayWatch Adventure Kayaks, Inc., located at 16622 Avocado Drive, Fort Myers, Florida 33908, hereinafter referred to as "BAYWATCH" in consideration of the mutual promises contained herein agree to the following:

BACKGROUND

1. The COUNTY owns property known as Bunche Beach, located at 18201 John Morris Road, Fort Myers, Florida 33908 in which BAYWATCH ADVENTURE KAYAKS, INC. desires to rent kayaks to park visitors.
2. The COUNTY hereby licenses BAYWATCH to operate a kayak rental at Bunche Beach.

TERM

3. The term of this License shall be for one (1) year from the date of Board approval with an automatic one (1) year renewal unless either party gives the other party thirty (30) days written notice of the intent not to renew.

USE OF FACILITIES

4. The COUNTY agrees to permit BAYWATCH to use the facilities at Bunche Beach to rent kayaks and similar non-motorized vessels to park visitors and launch kayaks and similar non-motorized vessels from a Parks and Recreation staff designated launch site.
5. BAYWATCH will be allowed to bring in one vehicle and one kayak trailer to be parked in the parking area at Bunche Beach as designated by Parks and Recreation staff.
6. BAYWATCH must provide all safety gear as required by law for kayak rental and will

be required to provide basic use and safety instructions to renters.

7. BAYWATCH may erect a pop tent shade structure no larger than 15' x 15' at the site where business will be conducted.
8. BAYWATCH may post roadside signs advertising the kayak rentals on the approach drive to Bunche Beach within the property boundaries of the park if such signs are in conformity with all state and county regulations.
9. All signs, pop-up tent, vehicles, trailer and equipment must be removed daily before sunset and stored offsite.
10. BAYWATCH may not sell any merchandise unless pre-approved by Parks & recreation.
11. BAYWATCH must present a neat and conservative dress.
12. BAYWATCH must remove daily any trash or debris generated by the business.
13. BAYWATCH shall secure all federal, state, and county permits necessary to provide kayak rental services. This shall include, but shall not be limited to, any permits and business licenses. BAYWATCH shall abide by all applicable laws, ordinances and regulations: federal, state, and county, and shall not use, or permit the kayak rental concession to be used for any unlawful, improper, or offensive purposes whatsoever.
14. Operating hours will be as agreed upon Lee County Parks and Recreation staff but shall only be conducted during posted Bunche Beach Park hours.

OPTION TO RENEW/TERMINATION

15. This Agreement may be renewed for an additional one year period upon written agreement of the parties no less than (90) ninety days prior to the expiration of the current terms. Amendments and changes to this Agreement, including increases to base license fees must be made upon written agreement of the parties in a manner similar to this Agreement.
16. This Agreement may be terminated by either party upon (30) thirty days' written notice to the other party.

NOTICES

17. Notices referred to in this Agreement shall be written, signed, and delivered to the notified party at the address identified in this Agreement.

RENT

18. BAYWATCH shall pay COUNTY Forty and NO/100 (\$40.00) Dollars by the first of each month without demand.

TAXES

19. BAYWATCH shall be responsible for remitting all appropriate taxes to the appropriate taxing authority.

ASSIGNMENT OR SUBLEASE

20. This License Agreement shall not be assigned nor shall the kayak rental concession be sublet without the express written permission of the COUNTY. The use of the kayak concession shall immediately revert to the COUNTY in the event of an assignment or sublease made without permission.

PARK CLOSING

21. At no time shall BAYWATCH operate concession, if the COUNTY closes the park due to inclement weather or acts of God, etc. BAYWATCH shall waive all claims for compensation for loss or damage due to closure of the park for any reason.

INSPECTION OF PREMISES

22. The COUNTY shall have the right to inspect the BAYWATCH facilities at any reasonable time, without advance notice, during the term of this Agreement.

DEFAULT

23. If BAYWATCH defaults in the payment of rent, or if it violates any other covenants of this Agreement, the COUNTY may immediately enter and retake possession of the facility without notice.

INSURANCE

24. BAYWATCH shall provide insurance, per the attached Exhibit "A", prior to the commencement of this Agreement.
25. BAYWATCH shall be liable for, and agrees to be liable for, and shall indemnify and hold the COUNTY harmless for any and all claims, suits, judgments or damages, losses and expenses, including court costs and attorney's fees, arising out of the concessionaire's errors, omissions, and/or negligence. BAYWATCH shall not be liable to, nor indemnify, the COUNTY for any portion of damages arising out of any error, omission, and/or negligence of the COUNTY or its employees.
26. Security of the concession area will be the sole responsibility of BAYWATCH. Lee County shall not be responsible for any theft, vandalism, or other destruction or property loss of any of the concessionaire's property or equipment.

EXCLUSIVITY

27. Nothing in this Agreement shall be construed as granting exclusive kayak concession rights to BAYWATCH at the Bunche Beach Park.

(BALANCE OF PAGE LEFT BLANK INTENTIONALLY)

IN WITNESSETH WHEREOF, the COUNTY and BAYWATCH have caused this Agreement to be executed under seal the day and year first above written.

ATTEST:
CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Tammara Hall, Chairwoman

APPROVED AS TO FORM:

By: _____
Lee County Attorney's Office

BAYWATCH ADVENTURE KAYAKS,
INC.

By: *Roger W. Smith*, Director

Mary Ellen Weddel
Witness Signature

MARY ELLEN WEDDEL
Witness Printed Name

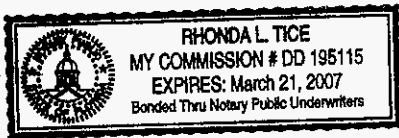
STATE OF FLORIDA) ss:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 12th day of September, 2006, by Roger W. Spinks, an individual, who is personally known to me or has produced Florida Driver's License as identification and did (did not) take an oath.

Rhonda L. Tice
Notary Public

Rhonda L. Tice
(Print Name)

My commission expires:



Addendum A

1. Insurance Requirements

- a. Workers' Compensation - to meet statutory limits in compliance with the Workers' Compensation Law of Florida. This policy must include Employers Liability with a limit of:

\$100,000 for each accident;
\$500,000 disease (policy Limit);
\$100,000 disease (each employee)

- b. Commercial General or Marina Liability - Coverage shall apply to premises and/or operations (including boat rentals), products and/or completed operations, independent contractors, contractual liability damage exposures with minimum limits of:

\$500,000 bodily injury per person (BI)
\$500,000 bodily injury per occurrence (BI)
\$100,000 property damage (PD) or
\$500,000 combined single limit (CSL) of BI and PD

2. Special Requirements:

- a. Ten (10) days prior to the commencement of any work under this contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. ***"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and its public officials"*** will be named as an "Additional Insured" on the General Liability and Maritime Remedies policy.
2. Lee County will be given (30) thirty days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Program Manager (P.O. BOX 398 Ft. Myers, FL 33902).

Alexander General Agency, Inc.

Innovation, Service, Performance

To: Michael
 Company: Avalon Insurance Group
 Fax: 239-275-1185

Pages including this page: 4

Date 9/5/2006

RE: Baywatch Adventure Kayaks

Following is our quote based on the information you provided, subject to satisfactory inspection:

| | |
|--|----------|
| 1,000,000 General Aggregate | 5,061.00 |
| Included Products and Completed Operations Aggregate | |
| 500,000 Personal Injury & Advertising Liability | |
| 500,000 Each Occurrence | |
| 50,000 Fire Damage | |
| 5,000 Medical Expense | |
| 500 deductible per claim | |
| Policy & Inspection Fee | 150.00 |
| State Tax | 260.55 |
| S O Fee | 10.42 |
| Total through Evanston Insurance Company | 5,481.97 |

25% fully earned minimum premium.

The following endorsements will be attached: Policy Jacket MSU100, Evanston Privacy Notice, Terrorism Exclusion. **General Liability:** Boats CG2412, Watercraft Endorsement, Products & Completed Operations Included in General Aggregate, Intellectual Property Hazard Exclusion, Animal Exclusion, Assault & Battery Exclusion, General liability Coverage Form CG001, Deductible Endorsement ME048, Combination General Endorsement MSU001, Exclude damage resulting from broadcast fax, email telephone or similar CG0067, Pre-Existing Injury, Loss or Damage Exclusion. These forms are available for your review. This quote may differ from your request. Please review carefully. This is an auditable policy. Premium is minimum and deposit. Option to provide coverage required to be offered by the Terrorism Risk Extension Act of 2005 is \$156

If coverage is desired, please let me know so that I can bind coverage with the company. We will need a fully completed and signed application AND terrorism notice at time of binding (accord app is fine). If Florida, a diligent effort form, too. Quote good for 30 days.

Sincerely,

Bill Alexander - Bill@AlexanderFirst.com - telephone extension 14



Correspondents
 at
 Lloyd's of London

PO Box 347 • Snellville, GA 30078
 Phone: 678-344-1733 • Toll Free 1-888-450-1405 • Fax: 678-344-0878
www.AlexanderFirst.com



POLICY NUMBER:

CG 24 12 11 85

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**BOATS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**SCHEDULE****Description of Watercraft:****Additional Premium:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

1. Exclusion g. of **COVERAGE A** (Section I) does not apply to any watercraft owned or used by or rented to the insured shown in the Schedule.
2. **WHO IS AN INSURED** (Section II) is amended to include as an insured any person or organization legally responsible for the use of any such watercraft you own, provided the actual use is with your permission.



EVANSTON INSURANCE COMPANY

WATERCRAFT ENDORSEMENT

** Entry optional if shown in the Common Policy Declarations. If no entry is shown, the effective date of the endorsement is the same as the effective date of the policy.*

| *ATTACHED TO AND FORMING PART OF POLICY NO. | *EFFECTIVE DATE OF ENDORSEMENT | *ISSUED TO |
|--|-----------------------------------|------------|
| | | |

THIS ENDORSEMENT CHANGES THE POLICY.

The coverage under this policy shall not apply to "bodily injury," "property damage," "personal injury," "advertising injury," or any injury, loss or damage, unless the following conditions are met:

1. No watercraft shall be rented or loaned to anyone under the age of 16, or who does not have a valid Operator's License;
2. You shall have all customers sign a rental agreement containing a hold harmless clause, and you shall retain same for a period of no less than 6 years and furnish same to us upon our request;
3. You shall go over the operation of the watercraft prior to releasing same with the party renting, and you shall have written rules and require customers to acknowledge same by signature, including "No Racing," "Do not ride in swimming areas," "No Diving from Watercraft Permitted," "No 'hot dogging' or reckless driving" and "No alcoholic beverages";(same should be a part of the rental agreement);
4. Watercraft shall not be rented to anyone who is intoxicated, under the influence of alcohol or has alcoholic beverages known to be in their possession;
5. Customers shall not fuel the watercraft, nor shall same be fueled with customers on board;
6. U.S. Coast Guard approved personal floatation devices, life preservers, shall be provided for each occupant and instructions rendered that all occupants must wear same at all times while aboard.

AUTHORIZED REPRESENTATIVE

DATE

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

Date _____

Dear Policyholder:

We are required to send you this notice pursuant to federal legislation concerning terrorism insurance.

You are hereby notified that under the Terrorism Risk Insurance Act of 2002 (the "Act"), effective November 26, 2002, that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act ("Terrorism Coverage"): The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT TERRORISM COVERAGE REQUIRED TO BE OFFERED BY THE ACT FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. UNDER THIS FORMULA, THE UNITED STATES PAYS 90% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS TERRORISM COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

SELECTION OR REJECTION OF TERRORISM INSURANCE COVERAGE

WHAT YOU NEED TO DO NOW:

PLEASE "X" ONE OF THE BOXES BELOW AND TAKE THE ACTION INDICATED.

| | |
|-------------------------------------|--|
| <input type="checkbox"/> | I hereby elect to purchase the Terrorism Coverage required to be offered under the Act for a premium of \$ _____. Action: Please sign and return this form with your payment for premium to your insurance agent. |
| <input checked="" type="checkbox"/> | I decline to purchase the Terrorism Coverage required to be offered under the Act. Action: Please sign and return this form to your insurance agent. |

Policyholder/Applicant's Signature

Print Name

Date

September 29, 2006

Baywatch Adventure Kayaks
16622 Avocado Dr.
Fort Myers, FL 33908

Subject: Insurance Requirements

To: Mr. G. Porter

Enclosed are the "binder" papers to meet the insurance requirements for BayWatch Adventure Kayaks. These meet all the requirements as requested, except for:

-Mr. Fiyalko has agreed to waive the Workman's Comp. Since there are no employees. Per his request, a letter stating this is also enclosed.

I believe this completes all the requirements in order to proceed for Lee County approval. If you have any questions or need any additional information, please give me a call.

Regards,



Roger W. Spinks

September 29, 2006

Baywatch Adventure Kayaks
16622 Avocado Dr.
Fort Myers, FL 33908

Subject: Workers' Compensation Insurance

Reference: License Agreement for the Operation of Kayak Rentals at Bunche Beach

To: Mr. W. Fiyalko, Risk Manager, Lee County Parks & Recreation

As per our discussion on 9/25/2006, you have agreed to waive the requirement for Workman's Compensation since the business will only be operated by the owners.

This is to affirm that when, and prior to the hiring of any employees, we will notify Lee County Parks & Recreation. If any qualified employees are hired, we will ensure that Worker's Compensation Insurance is obtained and in force, prior to any work being performed.

All other insurance requirements have been met, and the "binder" has been provided in a package to Mr. Gary Porter. The insurance is effective immediately with a 1 year term. If you have any questions and/or concerns, please let me know. Thanks for your help.

Regards,


Roger W. Spinks