

NOTICE: JCPRD open meeting agendas are subject to change prior to and/or during the course of the meeting.



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MEETING AGENDA

*JCPRD Administration Building Sunflower Room
7900 Renner Road, Shawnee Mission, KS 66219*

*January 7, 2019
5:30 pm*

CALL TO ORDER/ROLL CALL

DISCUSSION & ACTION

A. Stand Up Paddle Boarding Vendor Agreement – Bill McGowan, Outdoor Education Manager

Issue: Consider Board approval for the vendor agreement with Positive Vibes SUP and Fit LLC. to operate stand up paddle boarding (SUP) programs at Shawnee Mission Park Lake between the dates of April 1 through October 31, 2019.

OTHER BUSINESS

ADJOURNMENT



JOHNSON COUNTY PARK AND RECREATION DISTRICT
BOARD OF PARK AND RECREATION COMMISSIONERS

B R I E F I N G S H E E T

Presented to: SOE Committee **Meeting Date:** 1/7/2019

Project Name/Identification: Stand Up Paddle Boarding Vendor Agreement

Contact: Bill McGowan, Outdoor Education Manager **Phone:** 913-826-2802
Name & Title

ISSUE: Approval of a vendor agreement with Positive Vibes SUP and Fit LLC. to operate stand up paddle boarding (SUP) programs at Shawnee Mission Park Lake between the dates of April 1 through October 31, 2019.

BACKGROUND: Mindy Coulter, owner of Positive Vibes SUP and Fit LLC. was an SUP instructor for LL. Bean in 2017 at Shawnee Mission Park. In 2018 LL. Bean discontinued their Outdoor Discover Schools vendor agreement with JCPRD and Ms. Coulter started her own business and expressed an interest in continuing to offer SUP classes at Shawnee Mission Park. Ms. Coulter is a certified PaddleFit instructor.

ANALYSIS: JCPRD will receive 15% of gross sales from programs conducted in Shawnee Mission Park as outlined in this agreement.

FUNDING REVIEW: Are there funding implications involved? No Yes – explain: Revenue from this agreement will assist with overall funding of the Outdoor Education’s fee-supported budget.

ALTERNATIVES:

- | | Staff Recommendation |
|---|-------------------------------------|
| • Recommend consent approval as recommended by staff | <input checked="" type="checkbox"/> |
| • Recommend consent approval as determined/modified by committee | <input type="checkbox"/> |
| • Recommend discussion and action by the full Board at Board Meeting..... | <input type="checkbox"/> |
| • Recommend denial of request..... | <input type="checkbox"/> |
| • Table for additional consideration..... | <input type="checkbox"/> |
| • Take no action..... | <input type="checkbox"/> |
| • Other: | <input type="checkbox"/> |

If other, explain:

Consequences or additional Information (if any):

LEGAL REVIEW: Is Legal Counsel Review Required? No Yes – If yes, explain: Legal Counsel approved agreement as is.

SUGGESTED RECOMMENDATION/MOTION: It was the consensus of the committee to recommend Board consent approval of vendor agreement with Positive Vibes SUP and Fit LLC to operate stand up paddle boarding programs at Shawnee Mission Park Lake between the dates of April 1 through October 31, 2019.

SUPPORTING DOCUMENTATION:

- Attachment A: Vendor Agreement with Positive Vibes SUP and Fit LLC.

VENDOR AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 2019 by and between **Positive Vibes SUP and Fit LLC.**, hereinafter referred to as “**VENDOR,**” and **JOHNSON COUNTY PARK & RECREATION DISTRICT**, hereinafter referred to as “**JCPRD.**”

WHEREAS, JCPRD owns and operates Shawnee Mission Park, hereinafter referred to as “PARK” and JCPRD has designated a certain area in the PARK as the SUP program area”; and

WHEREAS, VENDOR desires to set up and operate stand up paddle boarding (SUP) programs, hereinafter referred to as “PROGRAMS;” and

WHEREAS, JCPRD has approved VENDOR to set up and operate its PROGRAMS in the PARK as a means to provide a convenient and affordable way for the public to learn SUP as well as provide additional revenue to JCPRD under the terms and conditions as hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. JCPRD agrees to allow VENDOR to set-up and operate its PROGRAMS in the PARK at the southeast edge of the Marina Parking Lot, hereinafter referred to as “DESIGNATED AREA,” during normal PARK operating hours between the dates of **April 1, 2019 and October 31, 2019**. After SUP equipment is unloaded vehicle and trailer will be parked in marina parking lot for duration of classes.
2. The general appearance of and location for VENDOR's PROGRAMS within the PARK must be approved in advance by JCPRD and VENDOR agrees to set up and operate its PROGRAMS at the approved location in the PARK and to operate it within the hours and on the days of operation as set forth above in Section 1.
3. VENDOR shall obtain and maintain during the term of this Agreement all necessary city, county, and state licenses or permits to operate its PROGRAMS in compliance with all applicable laws, ordinances, rules and regulations.
4. VENDOR shall be responsible for timely reporting and paying any and all taxes, including city, county, and state sales tax applicable to its PROGRAMS.
5. VENDOR shall provide adequately trained personnel to operate its PROGRAMS at all times.
6. VENDOR shall maintain an itemized record and accounting of all its PROGRAMS' Gross Sales. “Gross Sales” shall mean the gross sales of VENDOR which are derived from its operation of PROGRAMS in the PARK, less any documented returns or credits. Such accounting shall be submitted monthly to JCPRRD on or before the 15th day of each month, commencing with the first payment, which shall be due on or before **May 15, 2019**, and with the last payment, which shall be due on or before **November 15, 2019**, and shall cover a

period commencing on the first day of the month and including the entire month immediately prior to the due date of the accounting.

7. VENDOR shall be responsible for cleanup of the DESIGNATED AREA at the end of each PROGRAMS' day's operations.
8. VENDOR shall be solely responsible for any and all security of or for its merchandise, tools and supplies, and for its PROGRAMS within the PARK.
9. VENDOR agrees to pay JCPRD fifteen percent (15%) of its Gross Sales, as defined in Paragraph 6. Such payment shall be made in good funds by no later than 4:00 p.m. on or before each 15th day of the month immediately following VENDOR's PROGRAMS in the PARK. VENDOR shall submit along with such payment a detailed accounting, as required under Paragraph 6, of its sales for which payment is being made. The payment shall be delivered to the JCPRD address listed below, or using a credit card and electronic report and directed to the attention of the JCPRD Superintendent of Parks & Golf Courses via email to Bill.Massen@jocogov.org.
10. Except for claims which result from the reckless or deliberate behavior of JCPRD or its commissioners, employees, representatives, officers and agents, and except for JCPRD's liability arising under Section 11, VENDOR shall fully indemnify and hold harmless JCPRD and JCPRD's commissioners, employees, representatives, officers and agents from all losses, damages, costs, expenses, judgments or decrees arising out of or by reason of the failure, omission or neglect of VENDOR to perform any of the covenants herein and/or by reason of the alleged negligence or malfeasance of VENDOR, its agents, representatives or employees.
11. JCPRD shall not be liable or obligated to VENDOR for any injury or damage to VENDOR or VENDOR's property to the extent caused by theft, fire, acts of God, civil disaster, and/or such other occurrences and events beyond the reasonable control of JCPRD.
12. JCPRD shall have the right to inspect the PROGRAMS' operations and facilities in the PARK at all reasonable times.
13. VENDOR shall obtain at its expense, and continuously maintain in full force covering all of its PROGRAMS in the PARK under this Agreement, insurance as follows:
 - (a) A Comprehensive General Liability Insurance Policy Including Premises-Operations Liability, Independent Contractors Liability, Products and Completed Operations, and Brand Form Property Damage with these minimum limits:

| | |
|-------------------------------|-------------|
| Liability limit not less than | \$1,000,000 |
| Aggregate limit not less than | \$2,000,000 |
| Medical Payments | \$ 5,000 |

- (b) Automobile Liability
Bodily Injury & Property Damage Personal Auto Insurance
- (c) Workers' Compensation (If applicable by law)
Workers' compensation per statutory requirements.
Employer's Liability: \$500,000 each accident
 \$500,000 disease-policy limit
 \$500,000 disease-each employee

JCPRD needs to be named additional insured with a waiver of subrogation in favor of JCPRD. The vendor understands and agrees that he/she is an independent contractor and his/her agents, representatives and employees are not and shall not be employees of JCPRD that neither vendor nor his/her agents, representatives or employees are covered by workman's compensation insurance or is or shall be the recipient of any other benefits provided by JCPRD to its employees.

- (d) JCPRD will only accept coverage from an insurance carrier who offers proof that it:
 - 1. Is licensed to do business in the State of Kansas and
 - 2. Has a Bests rating of no less than A-, or as acceptable to JCPRD.
- (e) JCPRD shall be named as an Additional Insured on VENDOR's General Liability policy, and VENDOR shall provide JCPRD with a Certificate of Insurance evidencing the issuance of such policy(s), and naming JCPRD as Certificate Holder (see address below) and Additional Insured on VENDOR's General Liability policy, prior to the start of services, and shall require the insurance company to provide not less than thirty (30) days advance written notice to JCPRD of any cancellation, lapse or termination of the policy. Notwithstanding any other provision contained herein to the contrary, the failure of VENDOR to provide and to continuously maintain all such insurance coverage shall be grounds for the immediate cancellation or termination of this Agreement by JCPRD. VENDOR shall promptly notify JCPRD, Attn: SOE Division, 7900 Renner Road, Lenexa, KS 66219, of any claim relative to its use of the PARK including full details thereof and an estimate of the amount of loss or liability.

- 14. VENDOR understands and agrees that it and/or its employees, representatives and/or agents are independent contractors, are not employees, representatives and/or agents of JCPRD, and will not represent themselves as employees, representatives and/or agents of JCPRD. JCPRD understands and agrees that it and/or its employees, representatives and/or agents are independent contractors, are not employees, representatives and/or agents of VENDOR, and will not represent themselves as employees' representatives and/or agents of VENDOR.
- 15. VENDOR may terminate this Agreement at any time upon written notice. VENDOR shall be in default if it fails to comply with any term or condition of this Agreement and fails to cure such default within 30 days of receipt of written notice from JCPRD. In the event of a default by VENDOR, JCPRD shall have the right to exercise any one or more of the following remedies, concurrently or separately, and without any election of remedies being deemed to have been made: (a) JCPRD may terminate this Agreement and VENDOR shall remain liable for any damages sustained by JCPRD, and in such event JCPRD may contract with any third

party upon such terms and conditions as JCPRD shall determine for similar services in the PARK; (b) JCPRD may pursue any other remedy available at law or in equity. No right or remedy herein conferred upon or reserved to either party is exclusive of any other right or remedy herein, or by law or by equity provided or permitted, but each shall be cumulative of every other right or remedy given herein or now or hereafter existing by law or equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. No single or partial exercise by a party of any right or remedy hereunder shall preclude any other or further exercise of any other right or remedy.

16. Neither party shall at any time use the name(s), trademark(s), or trade name(s), whether registered or not, of the other in publicity releases or advertising or in any other manner, including customer lists, without securing the prior written approval of the other party which, with regard to VENDOR, must be an officer of VENDOR. Solely for purposes of this paragraph and publicity releases and advertising specifically related to the programs provided in this Agreement, written approval includes approval via e-mail.
17. Except for disputes for which only injunctive relief is sought, any disputes between the parties (which are not otherwise resolved by the parties) will be submitted to binding arbitration.
18. VENDOR shall not discriminate on account of race, sex, religion, color, national origin, ancestry, or age in the employment of persons, use of facilities or participants associated with VENDOR, and shall comply with all requirements of the American Disabilities Act.
19. VENDOR shall comply with all JCPRD Code of Regulations.
20. All notices under this Agreement will be in writing and sent by overnight mail or certified U.S. Mail, return receipt, to the parties at their respective addresses as noted below or at such other addresses as shall be specified in writing by either party to the other in accordance with this paragraph. Notices will be effective upon receipt or refusal.
21. This Agreement represents the entire understanding and Agreement between VENDOR and JCPRD and may not be modified except by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

Attn: Mindy Coulter, Owner
15779 W. 141th Terrace
Olathe, KS 66062

P: 402-850-3215

Signature

Date: _____

and

**JOHNSON COUNTY PARK & RECREATION DISTRICT
BOARD OF PARK & RECREATION COMMISSIONERS**
7900 RENNER ROAD, LENEXA, KS 66219

Michael Pirner, Chair

Date: _____

APPROVED AS TO FORM:

Fred Logan, JCPRD Legal Counsel