

Moved to V.B.1

Meeting Date
October 21, 2014



AGENDA	
Section	Consent
Item No.	II.B.2

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Kayak/Canoe/Stand-Up Paddleboard Commercial Permit Process – All Districts
DEPT/OFFICE:	Parks and Recreation Department

**Requested Action:**  
 It is requested the Board authorize the permit process for the commercial operation of kayaks/canoes/stand-up paddleboards in selected County owned and operated parks and approve permit fees. It is further requested the Board approve the Kayak/Canoe/Stand-Up Paddleboard (SUP) Permit Agreement and authorize the Parks and Recreation Director to execute said Agreement on behalf of the Board.

**Summary Explanation & Background:**

The increased popularity of eco-tours throughout Brevard County has prompted the need to establish a fair and balanced procedure that will not only continue eco-tourism opportunities for both visitors and residents, but will ensure the Brevard County public continues to have access to the parks and waterways.

Commercial enterprises providing kayak, canoe and stand-up paddleboarding tours will be required to secure permits for this operation at selected parks within the Brevard County Parks system. Pursuant to Brevard County Code of Ordinances, Sec. 78-107, Commercial Activity, a permit is required to conduct commercial activity. Compliance with all permit criteria must be met.

**Fiscal Impact:**

FY 2014-15: Approval of this action may generate revenue up to \$15,000.

FY2015-16: Revenue may be generated up to \$15,000.

**Clerk to the Board Instructions:**

**Exhibits Attached:** Kayak/Canoe/Stand-Up Paddleboard (SUP) Permit Agreement

<b>Contract /Agreement (If attached):</b>	<b>Reviewed by County Attorney</b>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager, Mel Scott	Department Director / Extension
Stockton Whitten	Assistant County Manager, Venetta Valdeno	Jack Masson, Director, Parks and Recreation Dept. 321-633-2046 <i>Jack Masson</i>



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

October 28, 2014

**MEMORANDUM**

**TO:** Jack Masson, Parks and Recreation Director

**RE:** Item V.B.1., Permit Process for the Commercial Operation of Kayaks/Canoes/Stand-Up Paddleboards in Selected County Owned and Operated Parks

**This is to correct the memorandum of October 23, 2014.** The Board of County Commissioners, in regular session on October 21, 2014, directed staff to work with the community and businesses to develop a voluntary **no cost** licensing concept relating to the commercial operation of kayaks, canoes, and stand-up paddleboards at selected parks within the Brevard County Parks system, and bring it back to the Board for its consideration.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

cc: Assistant County Manager Valdengo



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

October 23, 2014

**MEMORANDUM**

**TO:** Jack Masson, Parks and Recreation Director

**RE:** Item V.B.1., Permit Process for the Commercial Operation of Kayaks/Canoes/Stand-Up Paddleboards in Selected County Owned and Operated Parks

The Board of County Commissioners, in regular session on October 21, 2014, directed staff to work with the community and businesses to develop a voluntary licensing concept relating to the commercial operation of kayaks, canoes, and stand-up paddleboards at selected parks within the Brevard County Parks system, and bring it back to the Board for its consideration.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

cc: Assistant County Manager Valdengo

## KAYAK/CANOE/STAND-UP PADDLEBOARD (SUP) PERMIT AGREEMENT

**THIS AGREEMENT** ("Agreement"), entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2014, between \_\_\_\_\_ PERMITTEE ("Permittee"), the Board of County Commissioners of Brevard County ("County"), Florida, a political subdivision of the State of Florida.

### WITNESSETH:

**WHEREAS**, THE County operates and regulates the parks, boat launch access areas and appurtenances as active and passive public recreation facilities; and

**WHEREAS**, Brevard County has a unique ecosystem on the Florida coast that affords an eco-tourism experience for visitors and residents alike by use of canoes, boats, kayaks, stand-up paddleboards (SUP) etc. ("Watercraft"); and

**WHEREAS**, the County wishes to maintain and enhance the watercraft users' experience while protecting the various waterways' fragile ecosystem; and

**WHEREAS**, the locations that provide boat launch access for watercraft have limited parking and launch capacity requiring a need for regulation and control; and

**WHEREAS**, the provisions for limited commercial tourism is compatible with public use; and

**WHEREAS**, there are a limited number of locations which may provide commercial services on the waterways at this time; and

**WHEREAS**, it is the County's desire to serve the public in accordance with this Agreement and under the regulation of the County; and

**WHEREAS**, the County and the Permittee desire to set forth the terms and condition for public service in the parks with watercraft launch facilities; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration passing between the parties hereto, receipt of which is hereby acknowledged, be it agreed as follows:

**Recitals.** The foregoing recitals are true and are incorporated herein by reference.

1. **Grant.** That there is hereby granted by the County to the Permittee a permit to conduct kayak/canoe/SUP tours at specific location(s) described in Exhibit B. Permittee must comply with all applicable rules and regulations.
2. **Duration of Agreement.** This Agreement shall continue in force and effect for a term commencing on the Effective Date of this Agreement and expiring on December 31, 2015. On or before the effective date of this Agreement, Permittee shall deliver to the County the policies of

insurance required hereunder. Should the Permittee fail to comply with the foregoing, it shall acquire no right, privilege or authority under the Agreement whatsoever.

3. **Fees.** All fees shall be paid in full on or before the effective date of this agreement.
4. **Accounting Procedure:** The Permittee shall maintain complete and accurate financial and performance records in accordance with good and accepted accounting procedures, which records shall be available for inspection upon request by the County or any duly authorized representative thereof. The Permittee hereby agrees to maintain financial records and to adopt accounting procedures requested by the County. The Permittee shall cooperate with and provide the County or its duly authorized representative with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.
5. **Right to Audit Records:** In the performance of this Agreement, the Permittee shall keep books, records, and accounts of all activities related to this Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Permittee in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the Permittee for a period of three (3) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Section 119.07, Florida Statutes. All records or documents created by the Permittee or provided to the Permittee by the County in connection with the activities or services provided by the Instructor under the terms of this Agreement, are public records and the Permittee agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.
6. **Indemnification and Insurance:** The Permittee agrees to indemnify and hold harmless the County from any and all liability, claims, damages expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature, arising out of or connected with the activities of the Permittee or with the use, occupation, management or control of the facilities or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith. The Permittee agrees to defend at his expense any and all actions, suits or proceedings which may be brought against the County arising from the Permittee's activities and that he will satisfy, pay, and discharge any and all judgments that may be entered against the County in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this indemnification and hold harmless provision. The Permittee shall notify the County immediately in writing of any potentially hazardous condition existing on or about the premises utilized in conducting said program(s). All personal property utilized at a County facility shall be at the risk of the Permittee, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Permittee agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Permittee's interest therein. The Permittee agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Permittee against any and all claims, demands and causes of action whatsoever for injuries received and damage to property incurred in connection with the use, occupation, and management or control of the property during any activities conducted thereon by Permittee. Such policies of insurance shall insure the Permittee in the amount of not less than \$1,000,000 to cover any and all liability claims arising in connection

with any particular accident or occurrence. Permittee is responsible for Workers Compensation in accordance with State law. Said insurance policies shall be endorsed to name the County as an additional insured and shall be entitled to thirty (30) days prior notice of any changes or cancellation in said policies. The Permittee shall provide the described insurance on policies and with insurers acceptable to the County. These insurance requirements shall not relieve or limit the liability of the Permittee. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Permittee's interests or liabilities, but are merely minimums. A certificate of insurance indicating the Instructor has coverage in accordance with the requirements of this Agreement shall be furnished by the Permittee to the Brevard County Parks and Recreation Department, 2725 Judge Fran Jamieson Way, Bldg B., Room #203, Viera, Florida 32940 on or before the effective date of this agreement.

7. **Independent Contractor.** The Permittee shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall, in any way, be construed to constitute the Permittee or any of its agents or employees as the representative agents or employees of the County.
8. **Background Investigation Check.** The Permittee and all employees/volunteers hereby agree to submit to a Level 1 Background Check at the expense of the Permittee. The Permittee may be disqualified based on the results of the Level 1 background Check. This Agreement is contingent upon satisfactory completion of Level 1 Background Check. The County shall terminate this Agreement, effective immediately, if the Permittee is disqualified by the Level 1 Background Check or if the Level 1 Background Check reveals one or more felonies or first degree misdemeanors directly related to the Permittee's duties and responsibilities under this Agreement.
9. **Music Performance.** The Permittee shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Permittee shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Permittee agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.
10. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
11. **Governing Law.** This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
12. **Venue.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be nonjury.
13. **Unauthorized Alien Workers.** Brevard County will not intentionally award publicly-funded contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the Contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the County.
14. **Public Entity Crimes.** A person or affiliate who has been placed on the convicted Vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real

property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted Permittee list.

15. **Emergencies.** In the case of a declared state of emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.
16. **Copyright.** No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by the Permittee in the United States or any other country.
17. **Modification.** No modification of this agreement shall be binding on County or the Permittee unless reduced to writing and signed by a duly authorized representative of County and the Permittee.
18. **Standards of Operation.**
  - a. All commercial tours conducted in the designated area of the parks, shall have the appropriate Business Tax Receipt and proof of liability insurance in force.
  - b. Patrons shall be required to sign a County approved waiver form of liability absolving Brevard County Board of County Commissioners of any liability for death, injuries, or property damage incurred while participating in the commercial operation; copies of the waiver forms must be submitted to the County monthly.
  - c. Commercial Kayak/Canoe/SUP Tours
    - 1.) All tour patrons must wear lifejackets and guides must insure adequate operable audio warning devices are available to all patrons in accordance with U.S. Coast Guard requirements while on the waterways.
    - 2.) Permittees agree to remain ashore in the threat of severe or inclement weather and/or to immediately seek safe harbor upon the first indication that an impending weather conditions might endanger patron.
    - 3.) Unsupervised kayak/canoe/SUP rentals are expressly forbidden; all kayak/canoe/SUP tours must include a guide.
  - d. The Permittee must supervise the conduct of its patrons and/or employees to ensure that any such activities are not inconsistent with the proper safety, enjoyment and protection of visitors; any improper actions or activities must be corrected immediately and effectively.
  - e. The Permittee must maintain an alcohol and drug free commercial operation.
  - f. Must not interfere with the general public's use of park facilities.
  - g. All tours shall be conducted during park operation hours, unless approval has been permitted by the County.
19. **Administration.** The Permittee, in accepting this agreement, acknowledges and agrees that the County shall have the right and the authority, but not the obligation, to adopt Rules and Regulations regulating Permittee's conduct of its business when operating in County parks; to set schedules and times for operation and for use of all facilities; to resolve disputes between Permittees, or with County residents or County property owners; and to take such other or further action as may, in the County sole discretion, be necessary to further or promote the

public health, safety and welfare. Any decisions by any member of the County administration as relates to the above authority may be appealed by the Permittee to the Parks and Recreation Director, or designee, whose decision shall be final.

**20. Areas of Operation.**

a. The County shall designate the parking location for Permittee vehicles/trailers.

**21. Maintenance and Housekeeping.**

a. Storage of watercraft, trailers or related equipment on County property is expressly forbidden; all watercraft, equipment and trailers shall be removed from the park at the conclusion of the daily tours.

b. Signage – Permittee agrees to limit signage to that permanently affixed to the vehicle(s) used to conduct the business. Additional signage placement shall be at the discretion of the County.

c. The Permittee agrees to clean and remove paper, trash and debris generated by the tour operator and/or patrons of the business.

**22. Termination of Permittee Agreement.**

a. The Permittee agrees to notify the County, in writing, of its intentions to terminate this agreement.

1.) The rights of the Permittee may be immediately terminated by the County upon written notice by certified U.S. mail to the Permittee of failure of the Permittee to comply with the terms, limitations or conditions specified in this agreement. Fees paid are non-refundable.

**23. Non-Exclusivity.** The Permittee and the County agree that use of the designated parks and recreational areas as a commercial tour location is non-exclusive. Permittee shall not interfere with the general public's use and enjoyment of the park.

**24. Business Interruption.** The County shall not be liable to the Permittee for any damages arising out of the temporary prohibition of use and/or access to the designated parks, docks or launch areas for environmental protection, public safety, maintenance or governmental activities or events which prohibits the Permittee from being present and/or engaging in its business activities.

**25. Notice.** Notice under this Agreement shall be given to the County by mailing written notice postage prepaid, to the Brevard County Parks and Recreation Department at 2725 Judge Fran Jamieson Way, Bldg. B, Room #203, Viera, Florida 32940; and notice shall be given to the Organization by mailing written notice, postage prepaid, to \_\_\_\_\_.


**26. Assignment.** The Permittee shall not assign any portion of this Agreement.

**27. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed in its name by its proper officers on the date and year first above written.

**BREVARD COUNTY PARKS AND RECREATION DEPARTMENT:**

Reviewed for legal form and content:

  
\_\_\_\_\_  
Assistant County Attorney

9/16/14  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Jack Masson, Director, Parks and Recreation Dept.

\_\_\_\_\_  
Date

**WITNESS:**

\_\_\_\_\_  
  
\_\_\_\_\_

**PERMITTEE:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## EXHIBIT A

### RULES & REGULATIONS GOVERNING KAYAK & CANOE OPERATIONS IN COUNTY PARKS

- All business operations within or from any County park must have Permittee rights granted to the business owner.
- All patrons of Permittee operators must sign a waiver of liability (Participant Waiver and Hold Harmless Agreement).
- The Permittee agrees to abide by the terms and conditions of the kayak/canoe/SUP agreement. Violations will result in termination of the agreement and loss of rights and privileges to conduct specified business operations.
- Tour Permittees are responsible for the conduct of their patrons. Permittees are responsible for supervising their patrons.
- Permittees must educate patrons to respect the fragile environment, waterways and wildlife and to discourage patrons from feeding, touching, petting or otherwise disturbing wildlife.
- Permittees agree to clean and remove trash and debris generated by their operations or patrons.
- Storage of watercraft, trailers and related equipment on County property is expressly prohibited; all such items must be removed from the parks at the conclusion of the daily tours.
- Permittees agree to restrict commercial signage to that permanently affixed to their vehicles.
- Permittees agree to comply with schedule and location restrictions as outlined in Exhibit B.
- All canoe/kayak/SUP patrons must wear lifejackets and guides must insure adequate operable audio warning devices are available to all patrons in accordance with U.S. Coast Guard requirements.
- Permittees agree to conduct themselves and their businesses in an ethical and cooperative manner and to facilitate a harmonious locale by getting along with other operators and private park users.
- Any problems, disputes or concerns are to be directed to the Parks and Recreation Director located at 2725 Judge Fran Jamieson Way, Bldg. B- Room #203, Viera, Florida, 32940.

**Exhibit B - Kayak / Canoe / SUP Tour Agreement**

Vendor Name: \_\_\_\_\_

**General Permit Issued (\$500 Annual)**

Allows operation seven (7) days per week with no holiday restrictions.  
Two (2) tours maximum per day, not to exceed fifteen (15) boats per tour including guide boats, with no more than one tour operating at a time per vendor.

**Approved General Permit Launch Sites:**

Fay Lake Wilderness Park - Port St. John  
Hatbill Park - Titusville  
Chain of Lakes Park - Titusville  
Marina Park - Titusville  
Six Mile Creek - Mims  
Leroy Wright Recreation Area - Cocoa  
Kelly Park East - Merritt Island  
Eau Gallie Causeway Ramp - Melbourne  
Lake Washington Park - Melbourne  
Rotary Park Suntree - Melbourne

Fox Lake Park - Titusville  
Parrish Park - Titusville  
Kennedy Point Park - Titusville  
Sand Point Park - Titusville  
Scottsmoor Landing  
James G. Bourbeau Park - Cocoa  
Kiwanis Island Park - Merritt Island  
Fisherman's Landing - Grant-Valkaria  
POW/MIA Park - Melbourne

**Restricted Permit Issued (\$1,000 per Annual Day Awarded)**

Allows operation on specified weekday(s) only. No weekends or the following holidays - New Year's Day (Thursday, Jan. 1, 2015), Memorial Day (Monday, May 25, 2015), 4th of July (Saturday, July 4, 2015), Labor Day (Monday, Sept. 7, 2015), Thanksgiving Day (Thursday, Nov. 26, 2015), and Christmas Day (Friday, Dec. 25, 2015).

Two (2) tours maximum per day, not to exceed fifteen (15) boats per tour including guide boats, with no more than one tour operating at a time per vendor.

**Manatee Cove Park**

Day(s) of Operation: \_\_\_\_\_

**Pine Island Conservation Area**

Day(s) of Operation: \_\_\_\_\_

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor:</b> n/a	
<b>2. Fund/Account #:</b>	<b>Division Name:</b> Parks & Rec Admin
<b>4. Contract Description:</b> Kayak/Canoe/SUP Vendor Agreement	
<b>5. Contract Monitor:</b> Lindsay Perry/Jack Masson	<b>6. Mail Stop #:</b> 82
<b>7. Dept./Office Director:</b> Jack Masson	<b>8. Contract Type:</b>
<b>ACTION DATE:</b> 30 days from entry	<b>ACTION REQUIREMENT:</b> Need complete data

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	JM	9/11/14
Risk Management	X_____	_____	GV	9/17/14_____
County Attorney	_____	_____	_____	_____

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

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	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____ JM _____	_____ 9/11/14 _____
Risk Management	_____	_____	_____ _____	_____ _____
County Attorney	_____ <i>[Signature]</i> _____	_____	_____ <i>[Signature]</i> _____	_____ <i>[Signature]</i> _____

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AO-29: EXHIBIT I

Meeting Date
<b>October 21, 2014</b>



AGENDA	
Section	New Business <del>XXXXXX</del>
Item No.	<del>XXXXXXXX</del>

**AGENDA REPORT**  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

V B 1 New Business

SUBJECT:	Kayak/Canoe/Stand-Up Paddleboard Commercial Permit Process – All Districts
DEPT/OFFICE:	Parks and Recreation Department

**Requested Action:**  
It is requested the Board authorize the permit process for the commercial operation of kayaks/canoes/stand-up paddleboards in selected County owned and operated parks and approve permit fees. It is further requested the Board approve the Kayak/Canoe/Stand-Up Paddleboard (SUP) Permit Agreement and authorize the Parks and Recreation Director to execute said Agreement on behalf of the Board.

**Summary Explanation & Background:**  
The increased popularity of eco-tours throughout Brevard County has prompted the need to establish a fair and balanced procedure that will not only continue eco-tourism opportunities for both visitors and residents, but will ensure the Brevard County public continues to have access to the parks and waterways.  
  
Commercial enterprises providing kayak, canoe and stand-up paddleboarding tours will be required to secure permits for this operation at selected parks within the Brevard County Parks system. Pursuant to Brevard County Code of Ordinances, Sec. 78-107, Commercial Activity, a permit is required to conduct commercial activity. Compliance with all permit criteria must be met.  
  
**Fiscal Impact:**  
FY 2014-15: Approval of this action may generate revenue up to \$15,000.  
FY2015-16: Revenue may be generated up to \$15,000.

**Clerk to the Board Instructions:**

Exhibits Attached: Kayak/Canoe/Stand-Up Paddleboard (SUP) Permit Agreement

<b>Contract /Agreement (If attached):</b> Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager, Mel Scott	Department Director / Extension					
Stockton Whitten	Assistant County Manager, Venetta Valdengo	Jack Masson, Director, Parks and Recreation Dept. 321-633-2046 <i>Jack Masson</i>					

**KAYAK/CANOE/STAND-UP PADDLEBOARD (SUP) PERMIT AGREEMENT**

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**WITNESSETH:**

**WHEREAS**, THE County operates and regulates the parks, boat launch access areas and appurtenances as active and passive public recreation facilities; and

**WHEREAS**, Brevard County has a unique ecosystem on the Florida coast that affords an eco-tourism experience for visitors and residents alike by use of canoes, boats, kayaks, stand-up paddleboards (SUP) etc. ("Watercraft"); and

**WHEREAS**, the County wishes to maintain and enhance the watercraft users' experience while protecting the various waterways' fragile ecosystem; and

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**WHEREAS**, there are a limited number of locations which may provide commercial services on the waterways at this time; and

**WHEREAS**, it is the County's desire to serve the public in accordance with this Agreement and under the regulation of the County; and

**WHEREAS**, the County and the Permittee desire to set forth the terms and condition for public service in the parks with watercraft launch facilities; and

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3. **Fees.** All fees shall be paid in full on or before the effective date of this agreement.
4. **Accounting Procedure:** The Permittee shall maintain complete and accurate financial and performance records in accordance with good and accepted accounting procedures, which records shall be available for inspection upon request by the County or any duly authorized representative thereof. The Permittee hereby agrees to maintain financial records and to adopt accounting procedures requested by the County. The Permittee shall cooperate with and provide the County or its duly authorized representative with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.
5. **Right to Audit Records:** In the performance of this Agreement, the Permittee shall keep books, records, and accounts of all activities related to this Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Permittee in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the Permittee for a period of three (3) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Section 119.07, Florida Statutes. All records or documents created by the Permittee or provided to the Permittee by the County in connection with the activities or services provided by the Instructor under the terms of this Agreement, are public records and the Permittee agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.
6. **Indemnification and Insurance:** The Permittee agrees to indemnify and hold harmless the County from any and all liability, claims, damages expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature, arising out of or connected with the activities of the Permittee or with the use, occupation, management or control of the facilities or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith. The Permittee agrees to defend at his expense any and all actions, suits or proceedings which may be brought against the County arising from the Permittee's activities and that he will satisfy, pay, and discharge any and all judgments that may be entered against the County in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this indemnification and hold harmless provision. The Permittee shall notify the County immediately in writing of any potentially hazardous condition existing on or about the premises utilized in conducting said program(s). All personal property utilized at a County facility shall be at the risk of the Permittee, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Permittee agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Permittee's interest therein. The Permittee agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Permittee against any and all claims, demands and causes of action whatsoever for injuries received and damage to property incurred in connection with the use, occupation, and management or control of the property during any activities conducted thereon by Permittee. Such policies of insurance shall insure the Permittee in the amount of not less than \$1,000,000 to cover any and all liability claims arising in connection

with any particular accident or occurrence. Permittee is responsible for Workers Compensation in accordance with State law. Said insurance policies shall be endorsed to name the County as an additional insured and shall be entitled to thirty (30) days prior notice of any changes or cancellation in said policies. The Permittee shall provide the described insurance on policies and with insurers acceptable to the County. These insurance requirements shall not relieve or limit the liability of the Permittee. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Permittee's interests or liabilities, but are merely minimums. A certificate of insurance indicating the Instructor has coverage in accordance with the requirements of this Agreement shall be furnished by the Permittee to the Brevard County Parks and Recreation Department, 2725 Judge Fran Jamieson Way, Bldg B., Room #203, Viera, Florida 32940 on or before the effective date of this agreement.

7. **Independent Contractor.** The Permittee shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall, in any way, be construed to constitute the Permittee or any of its agents or employees as the representative agents or employees of the County.
8. **Background Investigation Check.** The Permittee and all employees/volunteers hereby agree to submit to a Level 1 Background Check at the expense of the Permittee. The Permittee may be disqualified based on the results of the Level 1 background Check. This Agreement is contingent upon satisfactory completion of Level 1 Background Check. The County shall terminate this Agreement, effective immediately, if the Permittee is disqualified by the Level 1 Background Check or if the Level 1 Background Check reveals one or more felonies or first degree misdemeanors directly related to the Permittee's duties and responsibilities under this Agreement.
9. **Music Performance.** The Permittee shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Permittee shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Permittee agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.
10. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
11. **Governing Law.** This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
12. **Venue.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be nonjury.
13. **Unauthorized Alien Workers.** Brevard County will not intentionally award publicly-funded contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the Contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the County.
14. **Public Entity Crimes.** A person or affiliate who has been placed on the convicted Vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real

property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted Permittee list.

15. **Emergencies.** In the case of a declared state of emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.
16. **Copyright.** No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by the Permittee in the United States or any other country.
17. **Modification.** No modification of this agreement shall be binding on County or the Permittee unless reduced to writing and signed by a duly authorized representative of County and the Permittee.
18. **Standards of Operation.**
  - a. All commercial tours conducted in the designated area of the parks, shall have the appropriate Business Tax Receipt and proof of liability insurance in force.
  - b. Patrons shall be required to sign a County approved waiver form of liability absolving Brevard County Board of County Commissioners of any liability for death, injuries, or property damage incurred while participating in the commercial operation; copies of the waiver forms must be submitted to the County monthly.
  - c. Commercial Kayak/Canoe/SUP Tours
    - 1.) All tour patrons must wear lifejackets and guides must insure adequate operable audio warning devices are available to all patrons in accordance with U.S. Coast Guard requirements while on the waterways.
    - 2.) Permittees agree to remain ashore in the threat of severe or inclement weather and/or to immediately seek safe harbor upon the first indication that an impending weather conditions might endanger patron.
    - 3.) Unsupervised kayak/canoe/SUP rentals are expressly forbidden; all kayak/canoe/SUP tours must include a guide.
  - d. The Permittee must supervise the conduct of its patrons and/or employees to ensure that any such activities are not inconsistent with the proper safety, enjoyment and protection of visitors; any improper actions or activities must be corrected immediately and effectively.
  - e. The Permittee must maintain an alcohol and drug free commercial operation.
  - f. Must not interfere with the general public's use of park facilities.
  - g. All tours shall be conducted during park operation hours, unless approval has been permitted by the County.
19. **Administration.** The Permittee, in accepting this agreement, acknowledges and agrees that the County shall have the right and the authority, but not the obligation, to adopt Rules and Regulations regulating Permittee's conduct of its business when operating in County parks; to set schedules and times for operation and for use of all facilities; to resolve disputes between Permittees, or with County residents or County property owners; and to take such other or further action as may, in the County sole discretion, be necessary to further or promote the

public health, safety and welfare. Any decisions by any member of the County administration as relates to the above authority may be appealed by the Permittee to the Parks and Recreation Director, or designee, whose decision shall be final.

**20. Areas of Operation.**

a. The County shall designate the parking location for Permittee vehicles/trailers.

**21. Maintenance and Housekeeping.**

a. Storage of watercraft, trailers or related equipment on County property is expressly forbidden; all watercraft, equipment and trailers shall be removed from the park at the conclusion of the daily tours.

b. Signage – Permittee agrees to limit signage to that permanently affixed to the vehicle(s) used to conduct the business. Additional signage placement shall be at the discretion of the County.

c. The Permittee agrees to clean and remove paper, trash and debris generated by the tour operator and/or patrons of the business.

**22. Termination of Permittee Agreement.**

a. The Permittee agrees to notify the County, in writing, of its intentions to terminate this agreement.

1.) The rights of the Permittee may be immediately terminated by the County upon written notice by certified U.S. mail to the Permittee of failure of the Permittee to comply with the terms, limitations or conditions specified in this agreement. Fees paid are non-refundable.

23. **Non-Exclusivity.** The Permittee and the County agree that use of the designated parks and recreational areas as a commercial tour location is non-exclusive. Permittee shall not interfere with the general public's use and enjoyment of the park.

24. **Business Interruption.** The County shall not be liable to the Permittee for any damages arising out of the temporary prohibition of use and/or access to the designated parks, docks or launch areas for environmental protection, public safety, maintenance or governmental activities or events which prohibits the Permittee from being present and/or engaging in its business activities.

25. **Notice.** Notice under this Agreement shall be given to the County by mailing written notice postage prepaid, to the Brevard County Parks and Recreation Department at 2725 Judge Fran Jamieson Way, Bldg. B, Room #203, Viera, Florida 32940; and notice shall be given to the Organization by mailing written notice, postage prepaid, to \_\_\_\_\_.

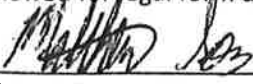
26. **Assignment.** The Permittee shall not assign any portion of this Agreement.

27. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed in its name by its proper officers on the date and year first above written.

**BREVARD COUNTY PARKS AND RECREATION DEPARTMENT:**

Reviewed for legal form and content:

  
\_\_\_\_\_

Assistant County Attorney

9/16/14  
\_\_\_\_\_

Date

\_\_\_\_\_  
Jack Masson, Director, Parks and Recreation Dept.

\_\_\_\_\_  
Date

**WITNESS:**

\_\_\_\_\_

\_\_\_\_\_

**PERMITTEE:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## EXHIBIT A

### RULES & REGULATIONS GOVERNING KAYAK & CANOE OPERATIONS IN COUNTY PARKS

- All business operations within or from any County park must have Permittee rights granted to the business owner.
- All patrons of Permittee operators must sign a waiver of liability (Participant Waiver and Hold Harmless Agreement).
- The Permittee agrees to abide by the terms and conditions of the kayak/canoe/SUP agreement. Violations will result in termination of the agreement and loss of rights and privileges to conduct specified business operations.
- Tour Permittees are responsible for the conduct of their patrons. Permittees are responsible for supervising their patrons.
- Permittees must educate patrons to respect the fragile environment, waterways and wildlife and to discourage patrons from feeding, touching, petting or otherwise disturbing wildlife.
- Permittees agree to clean and remove trash and debris generated by their operations or patrons.
- Storage of watercraft, trailers and related equipment on County property is expressly prohibited; all such items must be removed from the parks at the conclusion of the daily tours.
- Permittees agree to restrict commercial signage to that permanently affixed to their vehicles.
- Permittees agree to comply with schedule and location restrictions as outlined in Exhibit B.
- All canoe/kayak/SUP patrons must wear lifejackets and guides must insure adequate operable audio warning devices are available to all patrons in accordance with U.S. Coast Guard requirements.
- Permittees agree to conduct themselves and their businesses in an ethical and cooperative manner and to facilitate a harmonious locale by getting along with other operators and private park users.
- Any problems, disputes or concerns are to be directed to the Parks and Recreation Director located at 2725 Judge Fran Jamieson Way, Bldg. B- Room #203, Viera, Florida, 32940.

Exhibit B - Kayak / Canoe / SUP Tour Agreement

Vendor Name: \_\_\_\_\_

**General Permit Issued (\$500 Annual)**

Allows operation seven (7) days per week with no holiday restrictions.  
Two (2) tours maximum per day, not to exceed fifteen (15) boats per tour including guide boats, with no more than one tour operating at a time per vendor.

**Approved General Permit Launch Sites:**

Fay Lake Wilderness Park - Port St. John  
Hatbill Park - Titusville  
Chain of Lakes Park - Titusville  
Marina Park - Titusville  
Six Mile Creek - Mims  
Leroy Wright Recreation Area - Cocoa  
Kelly Park East - Merritt Island  
Eau Gallie Causeway Ramp - Melbourne  
Lake Washington Park - Melbourne  
Rotary Park Suntree - Melbourne

Fox Lake Park - Titusville  
Parrish Park - Titusville  
Kennedy Point Park - Titusville  
Sand Point Park - Titusville  
Scottsmoor Landing  
James G. Bourbeau Park - Cocoa  
Kiwanis Island Park - Merritt Island  
Fisherman's Landing - Grant-Valkaria  
POW/MIA Park - Melbourne

**Restricted Permit Issued (\$1,000 per Annual Day Awarded)**

Allows operation on specified weekday(s) only. No weekends or the following holidays - New Year's Day (Thursday, Jan. 1, 2015), Memorial Day (Monday, May 25, 2015), 4th of July (Saturday, July 4, 2015), Labor Day (Monday, Sept. 7, 2015), Thanksgiving Day (Thursday, Nov. 26, 2015), and Christmas Day (Friday, Dec. 25, 2015).

Two (2) tours maximum per day, not to exceed fifteen (15) boats per tour including guide boats, with no more than one tour operating at a time per vendor.

**Manatee Cove Park**

Day(s) of Operation: \_\_\_\_\_

**Pine Island Conservation Area**

Day(s) of Operation: \_\_\_\_\_

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor:</b> n/a	
<b>2. Fund/Account #:</b>	<b>Division Name:</b> Parks & Rec Admin
<b>4. Contract Description:</b> Kayak/Canoe/SUP Vendor Agreement	
<b>5. Contract Monitor:</b> Lindsay Perry/Jack Masson	<b>6. Mail Stop #:</b> 82
<b>7. Dept./Office Director:</b> Jack Masson	<b>8. Contract Type:</b>
<b>ACTION DATE:</b> 30 days from entry	<b>ACTION REQUIREMENT:</b> Need complete data

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	JM	9/11/14
Risk Management	X_____	_____	GV	9/17/14
County Attorney	_____	_____	_____	_____

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: n/a	
2. Fund/Account #:	Division Name: Parks & Rec Admin
4. Contract Description: Kayak/Canoe/SUP Vendor Agreement	
5. Contract Monitor: Lindsay Perry/Jack Masson	6. Mail Stop #: 82
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	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____ JM _____	9/11/14
Risk Management	_____	_____	_____ MDS _____	9/17/14
County Attorney	_____	_____	_____ MDS _____	9/17/14

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AO-29: EXHIBIT I