

CONCESSION USE AGREEMENT

THIS CONCESSION USE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 18th day of November, 2021 by and between the CITY OF MCCALL, hereinafter referred to as "City," and CHEAP THRILLS LLC, hereinafter referred to as "Licensee", located at 303 North 3rd Street, McCall, Idaho 83638.

WHEREAS, the City of McCall is the owner of Legacy Park and the Municipal boat launching ramp in Payette Lake located at the west end of Fir Street in McCall, Idaho (hereinafter referred to as "City Boat Ramp").

WHEREAS, on November 18, 2021 the McCall City Council approved limited use of the City Boat Ramp and designated beach area by Cheap Thrills LLC, from January 1, 2022 to December 31, 2024, subject to the terms of this agreement.

NOW, THEREFORE, City and Licensee, agree as follows:

1. The term of this Use Agreement shall be from January 1, 2022 to December 31, 2024.
2. Licensee agrees to follow the terms set out in Licensee's proposal, attached as Exhibit A, to the extent not inconsistent with the specific terms of this agreement, and to comply with all applicable laws, including the McCall City Code, and agrees that its use of the City Boat Ramp and designated beach area is nonexclusive and shall not interfere with any other public use.
3. Licensee shall maintain regular hours of operation which shall not begin earlier than 7:30 a.m., and shall end not later than 7:00 p.m. each day, Sunday through Saturday. Licensee shall be allowed to operate evening hours of 7:00 p.m. until 9:30 p.m. for four (4) nights per week to be coordinated with the Parks and Recreation Director.
4. All boat instructions and safety awareness must be completed at Licensee's regular place of business or on City Docks.
5. All personal watercraft instruction and safety awareness must be completed at Licensee's regular place of business or on designated beach area.
6. After loading and unloading of watercraft, trailers will be parked in designated trailer parking area located east of Municipal boat launch ramp as coordinated with the City of McCall or offsite and done in a timely manner.
7. All major repair work will be completed off City property.
8. Watercraft refueling will be done away from City beaches.

9. Public has primary use of the boat launch ramp, docks and beaches. Pamphlets, brochures, and flyers will not be given to public in Legacy Park, unless requested by a member of the public.

10. A. All clothing worn by employees must clearly identify the individuals as employees of Licensee.

B. All vehicles used by the Licensee, or their employees must display an identification tag or sticker.

11. Licensee shall immediately provide the City of McCall a Certificate of Liability Insurance (ACORD Form 27) with the City added as an additional insured in an amount not less than \$1,000,000 per occurrence, and also agrees to indemnify and hold the City harmless from any and all claims arising out of Licensee's use of the City Boat Ramp and designated beach area. Licensee shall not use the City Boat Ramp or designated beach area until the Certificate of Liability Insurance described herein has been provided to the City of McCall.

12. Nothing contained in this Agreement shall create any relationship between Licensee and the City as partners, joint venture, principal and agent, or employee and employer. This relationship is solely that of an independent user with permission for the non-exclusive use of the City Boat Ramp from January 1, 2022 to December 31, 2024.

13. Either party may terminate this Agreement upon 90 days written notice.

14. In the event Licensee breaches this agreement, City shall provide Licensee with written notice of the default, either delivered to Licensee at its registered office or mailed by regular first class mail to Licensee's address set forth above. In the event the default, in the sole discretion of City, constitutes a threat to the health, safety or welfare of City, its citizens, or Payette Lake, City may demand that Licensee immediately cease operations at Legacy Park and the Boat Ramp, which operations will not be allowed to resume unless, and until, the default is cured. For defaults not involving a threat to the health, safety, or welfare of City, its citizens, or Payette Lake, such default must be cured not later than five (5) days after personal delivery or mailing of the written notice. Failure to cure a default, or repeated defaults, of whatever nature, shall be grounds for termination of permission to use City property.

15. The negotiated fee for the Concession Agreement shall be \$10,000 yearly, which sum is payable prior to Licensee's commencement of operations, but in any event not later than May 14 of each year. The Fee shall be adjusted annually effective May 1, 2023 and each May 1 thereafter, for the term of this Agreement, according to the percentage increase of the Consumer Price Index (Bureau of Labor Statistics) using the Western Urban index for the twelve calendar months prior to and including the month of March immediately preceding the date the fee is payable.

16. This Agreement authorizes Licensee to conduct commercial activities as described in Exhibit A from the southerly face of the southernmost dock at the Municipal Boat Launching Ramp near the west of end Fir Street and on 106 feet of beach south of the Pump station dock in Legacy Park. The City reserves the right to relocate the licensee to another location within Legacy Park or adjacent City-owned waterfront areas during the term of this agreement.

19. In the event an action is brought to enforce any of the terms or provisions of this agreement or enforce forfeiture thereof for default thereof by either of the parties hereto, the successful party to such action or collection shall be entitled to recover from the losing party a reasonable attorney fee, together with such other costs as may be authorized by law.

The effective date of this agreement is the 1st day of January, 2022.

CITY OF McCALL

By _____
Robert S. Giles, Mayor

Attest:

By _____
BessieJo Wagner, City Clerk

“City”

STATE OF IDAHO)
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) :ss
County of _____)

On this ____ day of _____, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT S. GILES and BESSIEJO WAGNER, the Mayor and City Clerk, respectively, of the CITY OF McCALL, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the City of McCall and were authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for Idaho
Commission Expires: _____

CHEAP THRILLS LLC

By _____

"Licensee"

STATE OF IDAHO)
 :SS
County of _____)

On this ____ day of _____, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, the _____ of CHEAP THRILLS LLC, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that ____ executed the same on behalf of Cheap Thrills LLC and was authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for Idaho
Commission Expires: _____

PERSONAL GUARANTY

The undersigned hereby personally guarantee the performance of the Licensee, Cheap Thrills LLC, under the terms and conditions of this Concession Use Agreement and acknowledge that, in executing this Personal Guaranty, they become personally, jointly and severally liable for all of the obligations of the Licensee under this Concession Use Agreement.

GERRY IKOLA

RACHAEL IKOLA

STATE OF IDAHO)
 :SS
County of _____)

On this ____ day of _____, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared GERRY IKOLA and RACHAEL IKOLA, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for Idaho
Commission Expires: _____