

Memo



Date: July 5, 2011
File: 2380-20
To: City Manager
From: Manager, Property Management
Subject: Activity Concession Tugboat Bay - Kalavida Surf Shop

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into a two (2) month License of Occupation with Kalavida Surf Shop, to provide an activity concession services at the north end of Tugboat Bay, in the form attached to the Report of the Manager, Property Management, dated July 5, 2011;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the License of Occupation.

Purpose:

To obtain Council endorsement to award an activity concession contract to Kalavida Surf Shop for the north end of Tugboat Bay.

Background:

In March, 2011, staff issued bid packages to all those who have inquired about activity and food vending opportunities through direct contact as well as placing ads in local newspapers. The closing date for the sealed bids was April 12th at 3:00 pm. Bids were then evaluated independently by a staff selection committee.

Kalavida Surf Shop ("Kalavida") submitted a bid for the Rotary Beach activity concession but was unsuccessful. Kalavida requested the City's consideration of a bid for the Tugboat Bay activity concession. Only one bid was received for Tugboat Bay and it was withdrawn. The bid from Kalavida was received together with the bid deposit and evaluated according to the established criteria for activity concessions.

Kalavida will offer a wide range of watersports rentals with emphasis on stand up paddleboards. Besides rentals, Kalavida also offers lessons and will donate rental time and lessons to various charity groups.

Financial/Budgetary Considerations:

Kalavida Surf Shop will pay \$500.00/month for the term of the contract.

A handwritten signature in blue ink, located in the bottom right corner of the page.

Internal Circulation:

Manager, Parks and Public Spaces
Manager, Purchasing
Financial Planning Manager

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Community & Media Relations Considerations:
Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of this contract.

Submitted by:



Ron Forbes, Manager
Property Management

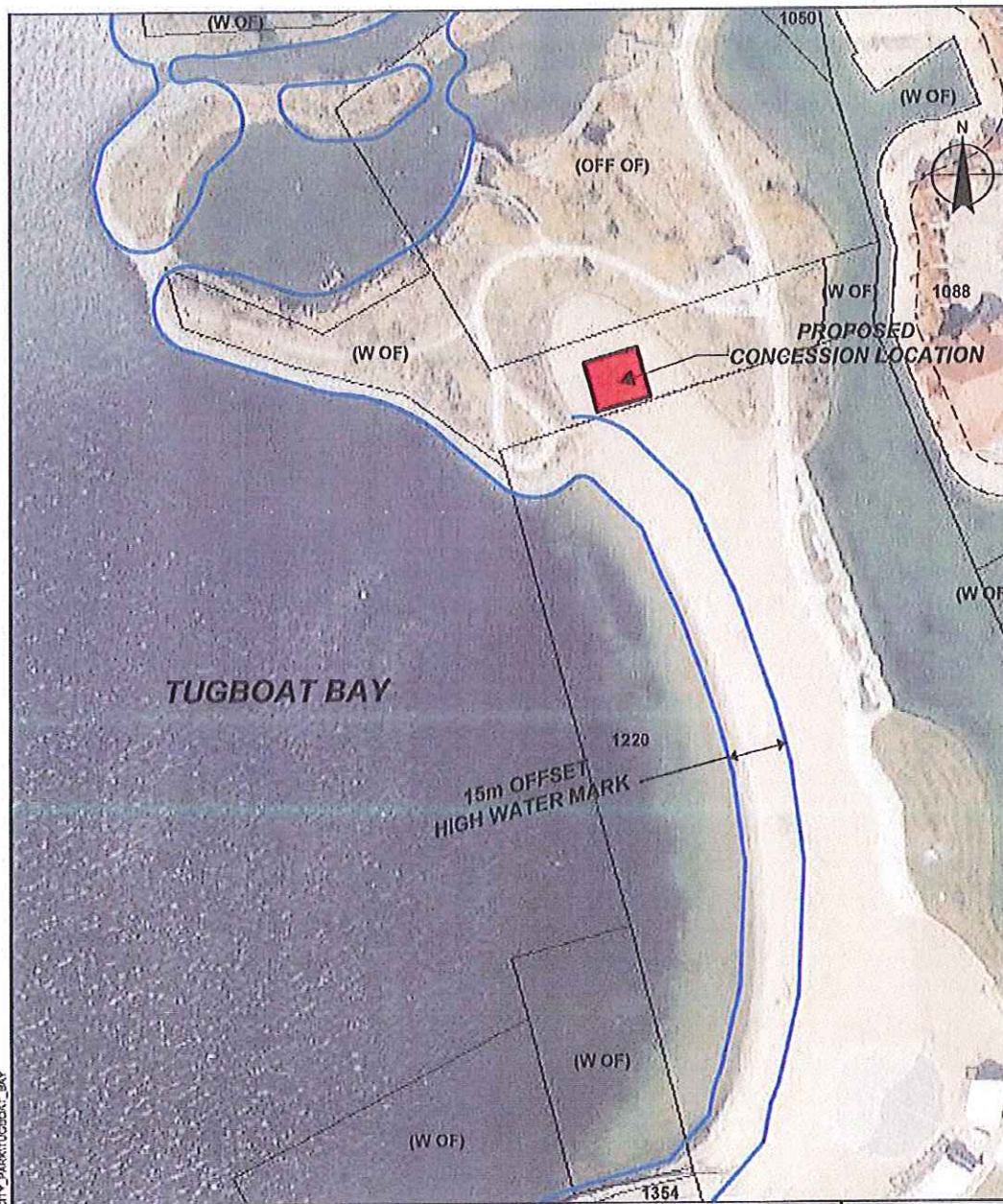
Approved for inclusion:




D. Gilchrist, Director, Real Estate & Building Services

cc: Director, Financial Services
Manager, Parks and Public Spaces





P:\DRAFTING\GIS\CITY_PARK\TUGBOAT_BAY

DATE MARCH 17 / 2011		TUGBOAT BAY		
SCALE N.T.S.				
DRAWING NO.	REV.			

LICENSE OF OCCUPATION
Reference Activity Concession Service Package 2011

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

KALAVIDA SURF SHOP
13908 Kalamalka Road
Coldstream, British Columbia V1B 1Y9

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide a Beach Activity Concession services (the "Services") at Tugboat Bay/ Waterfront Park during the 2011 season.

NOW THEREFORE this License witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services as set out in Appendix B which shall be binding upon the parties.

Appendices

The following attached Appendices are a part of this License:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - City of Kelowna Bid Proposal Tugboat Bay/Waterfront Park
Submitted by Kalavida Surf Shop

If there is any inconsistency or conflict between the provisions of the License and the Appendices, the License shall govern and take precedence over all other Contract Documents.

LICENSE TERMS AND CONDITIONS

1.0 Definitions (For purposes of this License, the following terms shall have the meanings set forth below):

“License” means the executed License between the City and the successful Contractor on the terms and conditions set out in this document;

“License Administrator” refers to the individual appointed by the Manager, Property Management to administer this License on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this License, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“H.S.T.” means any Harmonized Sales Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this License;

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) "Determination" shall mean the written documentation of a decision of the City's Representative including findings of fact to support a decision. A Determination becomes part of the file to which it pertains;
- (c) the Heading and Subheadings inserted in this License are designed for convenience only and do not form a part of this License nor are they intended to interpret, define, or limit the scope, extent, or intent of this License or any provision thereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is, duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this License and to comply with every term and condition of this License;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this License and to execute and deliver this License;

- (d) this License has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of Contractor, to the City in connection with this License is materially correct and accurate;
- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this License;
- (g) the observance and performance of the terms and conditions of this License will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or License to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this License;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this License;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this License identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual Licenses in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;

- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) Contractor will comply with all the requirements of the License and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this License or under this License;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this License.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer beach activity concession services as set out in the Scope of Services attached as Appendix "B", provided the following is observed;
 - i) As access requires driving in through Rotary Marsh on a narrow path, any damage caused by the Contractor's vehicles and/or trailer will be the responsibility of the Contractor to repair;
 - ii) Vehicles must not be parked on the beach, and must be removed from walkways promptly;

- iii) The Contractor must be aware of public safety at all times, and ensure that travel into and out of the swim area by renters be as minimal as possible.
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of beach activity concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted activity concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Proposal for Submission submitted by Kalavida Surf Shop ("Appendix E") and cooperate fully with the various departments and act in good faith towards the City;
- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Term

The term of the License shall be from July 15th to September 15th, 2011 (the "Term") with no further option to renew.

6.0 Termination - City

6.1 This License will terminate:

- (a) at the expiration of the Initial Term, unless extended by mutual License; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or License to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of Complaint thereof

from the City, then the City may, at its option, terminate this License forthwith without prejudice to any other rights it may have in law or equity. If this License is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual License.

- (c) For the purposes hereof, "Event of Default" shall mean any one or more of the following:
 - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, Licenses, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this License, or any License entered into pursuant to any such Licenses;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the License without the required consent of the City;
 - (iv) if Contractor fails to provide a beach activity concession services as required under the terms of this License,
- (d) Immediately if:
 - (i) the City determines that the actions of the Contractor puts the public at risk;
 - (ii) the Contractor's insurance has lapsed.

7.0 Termination - No Cause

7.1 This License may be terminated without cause by the City or the Contractor by giving 30 days written notice by either party to the other.

8.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this License or related to this License ("Dispute") using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer

the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs and each party will bear its own costs of participating in the mediation.

9.0 Compensation to the City

9.1 The License will commence immediately upon authorization of an License for beach activity concession in the beach parks. The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.

10.0 Independent Contractor

10.1 Nothing in this License shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this License shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

10.2 Contractor is and shall at all times during the performance of this License be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the License shall be its employees or servants and not the employees, servant, or agents of the City.

10.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his/her best-qualified personnel to work fulfil the contract. Should the City deem anyone employed on the work incompetent or unfit for his/her duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

11.0 Liaison

11.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this License. In particular:

- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this License, plus an alternative representative

to so act in the absence or inability to act of Contractor's Representative;
and

- The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this License, plus an alternative representative to so act in the absence or inability to act of the City's Representative.

11.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

12.0 Governing Law

12.1 This License shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.

12.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

13.0 Waiver - City

- 13.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this License, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 13.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the License shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

14.0 Waiver - Contractor

- 14.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this License, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 14.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the License shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

15.0 Subcontractors

- 15.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.
- 15.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this License shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

16.0 Amendments

No amendment to this License shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this License is executed.

17.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this License including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

18.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a “public body” defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

19.0 Non Assignability

This License may not be assigned by Contractor without the prior written consent of the City. For the purpose of this License, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

20.0 Joint and Several

If this License is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this License are jointly and severally liable under and bound by this License.

21.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

22.0 Insurance & Indemnity

22.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use

thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this License, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

22.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A.

22.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the License, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the License must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

23.0 Occupational Health and Safety

23.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.

23.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.

23.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

24.0 WorkSafe BC Coverage

24.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.

24.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.

24.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

25.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, or during the term of the contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

26.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

27.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the License. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

28.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

29.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this License.

The City may conduct inspections, audits, and assessments of Contractor's performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this License and to the quality standards set out in this Licensed

30.0 Business Review & Planning

30.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

31.0 Enurement

This License shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

31.0 Service of Notices

32.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

To the City

(City Representative)

Attention: Ron Forbes
Manager, Property Management
City of Kelowna
1435 Water Street, Kelowna, BC V1Y 1J4
Telephone: 250-469-8669 Fax No.: 250-862-3349
E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Kevin O'Brien
Kalavida Surf Shop
13908 Kalamalka Road, Coldstream, British Columbia V1B 1Y9
Telephone: 778-475-5808 Fax No.: _____
E-mail: info@kalavidasurfshop.com

32.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this License to be executed on the day and year indicated below.

Accepted on behalf of

KALAVIDA SURF SHOP
by its authorized signatory:



KEVIN O'BRIEN

CITY OF KELOWNA
by its authorized signatory:

Date Executed: _____

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate an activity concession within the designated area as per Appendix D.

1. The Contractor will provide for use by the public: rentals, sales and/or lessons of watercraft propelled through the water by human power and can include but is not limited to stand-up paddleboards, canoes, kayaks, leg powered paddle boats etc.
2. The Contractor shall maintain all equipment to such standards as will ensure safety for operators.
3. The Contractor shall ensure that no persons too young to operate the proposed activity are permitted to use them, and shall ensure that no persons operating the proposed activity do so in an unsafe manner or endanger persons swimming at any of the designated beaches.
4. At a minimum the Contractor shall operate during the period of July 12th to September 15th 2011.
5. The park is open from 6 am to 11 pm each day and the contractor will provide service in the parks between 10 am and 6 pm, 7 days per week, weather permitting.
6. The Contractor is to supply this service for a one (1) year period.
7. The Contractor will pay permits, taxes and licenses.
8. The Contractor will clean and maintain the area surrounding the concession to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the concession).
9. The Contractor shall comply with all regulations regarding fire, traffic, safety and shall acquire all necessary permits.
10. No outside advertising will be permitted without the consent of the City.
11. The City leases a food concession in the same park(s). So no food will be allowed to be provided.
12. Solicitation of the public is not allowed.
13. The Contractor must seek to minimize any conflict with adjacent property owners and any other users of the park.
14. The Contractor may not sublet, nor assign the contract without the written consent of the City. If approved by the City the minimum amount for such assignment shall be \$500.00 payable by the Contractor to the City.
15. The Contractor is required to supply a bid deposit per location in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a "performance deposit".
16. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
17. There will be no structure provided. If the Contractor wishes to provide a structure the Contractor will be required to meet all regulations and Bylaws and any design must be approved by the City's Infrastructure Planning department.
18. There will be no power available.
19. Prior to awarding the bid to the successful Proponent, the Proponent must prove to the City ownership of the activity equipment listed in proposal.

- 2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.
3. The City Named As Additional Insured
The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
4. Contractor's Subcontractors
The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.
5. Certificates of Insurance
The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.
6. Other Insurance
After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.
7. Additional Insurance
The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.
8. Insurance Companies
All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
9. Failure to Provide
If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX A-1

CERTIFICATE OF INSURANCE



City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

- It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:
1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
 2. The City of Kelowna is named as an Additional Insured.
 3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

 Print Name

 Title

 Company (Insurer or Broker)

 Signature of Authorized Signatory

 Date

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18. There will be no power available.
19. Prior to awarding the bid to the successful Proponent, the Proponent must prove to the City ownership of the activity equipment listed in proposal.

APPENDIX C - FEE SCHEDULE

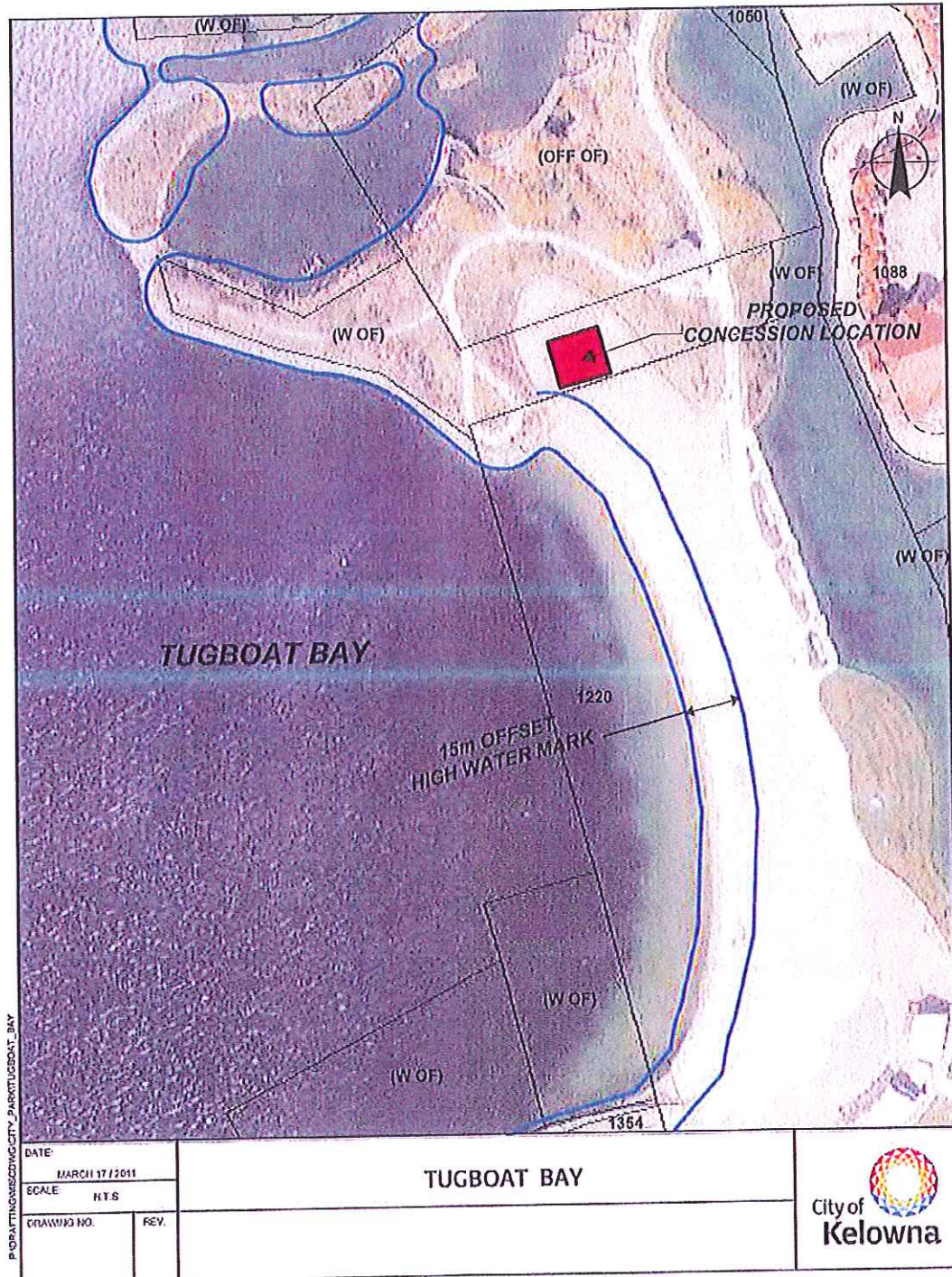
2011

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1,072.58 plus HST** for the term of the contract. Payment will be on or before as follows:

			Total Instalment
July 12-31, 2011 (20 days)	\$322.58 + 12% HST	\$38.71	= \$361.29
August 30, 2011	\$500.00 + 12% HST	\$60.00	= \$560.00
Sept. 15, 2011 (15 days)	\$250.00 + 12% HST	\$30.00	= \$280.00

APPENDIX D - PREMISE

The premises are those lands legally described as that portion of land, located at 1220 Water Street, Kelowna, BC, as shown on the drawings.



Operating on the Beach as:

Kalavida Surf Shop

A division of Kalavida Sports Ltd.

Mobile Rental/Sales Vendor - Water-Sports Equipment

Tugboat Bay / Waterfront Park

Table of Contents:

- 1. General Overview of Bid Proposal**
- 2. Experience and Qualifications**
- 3. Scope of Operations**
- 4. Equipment / Rental Fees / Vendors**
- 5. Supplemental materials**
 - Best New Business Nomination
 - 2010 Media Coverage Summary
 - Reference Letters
 - Profile of Stand Up Paddleboarding
 - Images

Kalavida Surf Shop

General Overview of Proposal

Tugboat Bay

Please accept our proposal for the 'Activity Concession Bid' at Tugboat Bay in Waterfront Park, Kelowna.

Our concept is to offer a range of watersports rentals with emphasis on Stand Up Paddleboards. In addition to offering rentals, we are committed to growing the sport of Stand Up Paddleboarding in Kelowna with the goal of making the city a destination for the fast-growing sport.

We agree to all of the terms and conditions in the bid package named City of Kelowna Activity Concession Bid Package. You are currently in possession of \$1,000 from our initial bid. Should this bid be accepted, we agree to supply all of the necessary licenses and already have \$5 Million liability insurance in place.

Transporting the equipment in and out of Tugboat Bay is more challenging than Rotary Beach and without any on-site storage facility, we are faced with additional costs for both labour and time. This will result in additional operational costs.

For this reason, Kalavida is offering to pay the City of Kelowna a total sum of \$1,350 for 2011. This is based on a monthly fee of \$500. This will allow us to grow a viable business knowing that we have to cover significant costs for equipment, staff, transportation and marketing. For the following two years, Kalavida is offering to pay \$2,250 in 2012 and \$2,500 in 2013. Additionally, Kalavida will donate rental time and lessons to various charity groups equal to \$500 per year.

About Kalavida - In 2009, we established our Vernon store, Kalavida Surf Shop, to promote the sport of Stand Up Paddle Boarding and enjoyed a successful first year. That success included being nominated for 'Best New Business of the Year' with the Vernon Chamber of Commerce. Through our efforts to develop the sport through events and activities, we created a strong SUP community and re-energized tourism at Kalamalka beach.

Our Vernon store has partnered with the Chamber of Commerce, Tourism Vernon and is very active in giving back to the community. We continue to establish long-term relationships with organizations such as SPPrKL (Society for the Protection of Kalamalka Lake) and Paddle for the Planet (Kelowna). We plan to emulate these efforts in Kelowna with a focus on fun at the beach and environmental protection of the watershed and Lake Okanagan.

Our current efforts in Kelowna include:

1. Opening a new retail store on May 3, 2011 - Stand Up Paddleboards, lessons, and events
 2. Offering Stand Up Paddleboard classes through Kelowna Recreation and Culture - Kathleen Rowe
 3. Collaborating with David Suzuki Foundation through Paddle for the Planet - Bob Purdy, Kelowna Resident
 4. Met with Tourism Kelowna to discuss potential of hosting major paddleboard event - Chad Douglas, Sport Event Development Manager, Kelowna Tourism
-

Kalavida Surf Shop
Relevant Experience, Qualifications and Successes
Tugboat Bay

Relevant Experience

1. Operated successful rental and sales store across from Kalamalka Beach.
2. Helped over 500 people try Stand Up Paddleboard throughout the summer.
3. Developed a strong community of paddlers through a combination of grass roots events and activities. They included a local racing series, social paddles, and beach clean-ups.
4. Owners and staff to receive Paddle Canada Certification when courses become available.

Qualifications:

1. Owners have operated previous businesses and worked in the sport and hospitality industry.
 - Kevin O'Brien - National Bicycle League, USA / Director of Marketing/Communications
 - Michelle Mitchell - ESL School, Vancouver, Activities Director
 - Allen Der - Business Owner
2. Kevin O'Brien has organized grass roots and national bicycle events for over 20 years.
3. Michelle Mitchell has organized activities through her previous business for students and adults.
4. Allen Der owned and operated a successful retail business in Kelowna - Bang on T-shirts.
5. Owners and staff trained through PaddleSurf Fitness.

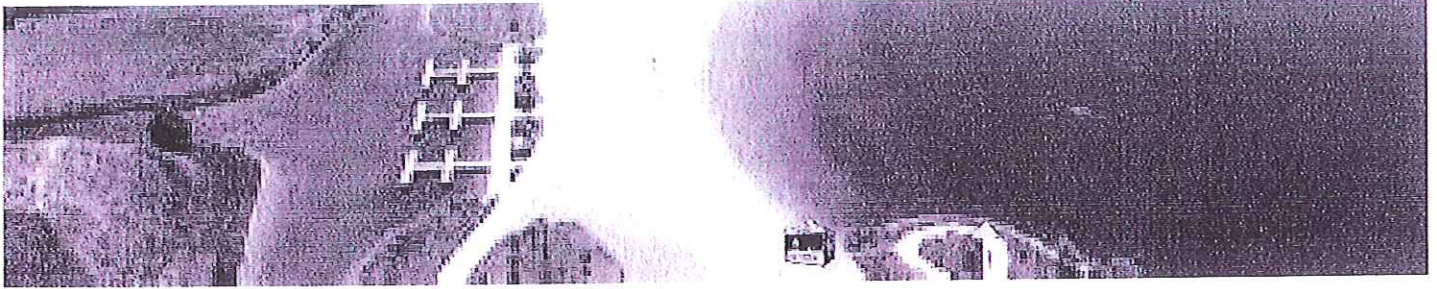
Successes:

1. Nominated for 'Best New Business of the Year' with Vernon Chamber of Commerce.
 2. Featured in Okanagan Life Magazine and various local newspapers and magazines.
 3. Hosted the largest Stand Up Paddle event in Canada - Kalamalka Classic, June 2010.
 4. Hosted successful local racing series that started with 5 participants and grew to 40 in the first year.
 5. Featured in the 2011 Vernon Tourism Guide.
-

Kalavida Surf Shop

Scope of Operations

Tugboat Bay



Location:

Tugboat Bay, Kelowna, BC

North side of Park

Tough Outdoor 10 x10' Tent to house equipment/staff

General Operations:

Months: June 15 to September 4

Hours: 10:00am - 6:00pm - 7 days/week 'Weather permitting'

Primary Activity: Rental of Paddleboards

Secondary Activities: Rental of kayaks, inflatables

Events: Lessons, Recreational paddles, Races

Benefits for Kelowna and local community:

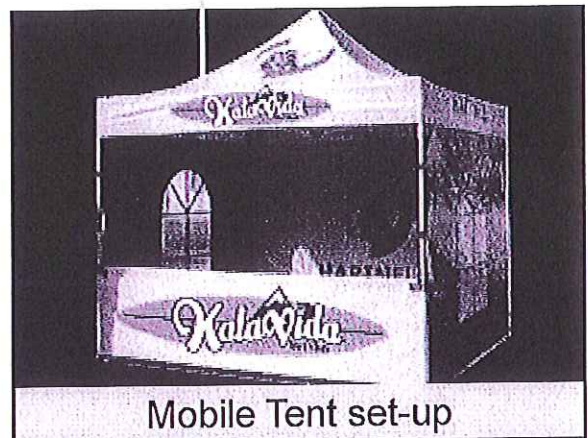
- Healthy, non-motorized watersports - for all ages
- Increase in Tourism - For local businesses and Kelowna in general. As the sport's profile rises, so does Kelowna.
- Destination Kelowna - The Okanagan is a prime destination for the sport and this will attract additional tourism
- Grassroots Program - Kalavida will host a variety of events and programs to develop the sport organically
- Environmental - Kalavida regularly organizes beach clean-ups, charity functions and supports the community

Overview of Events and Activities:

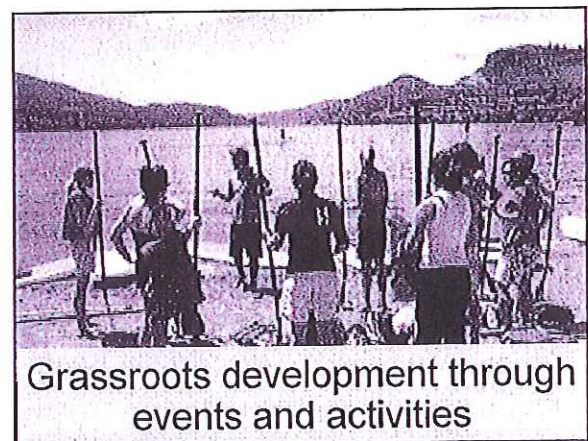
- Organize a local series of races to develop the sport
- Organize social paddles to create a community
- Partner with Tourism Kelowna
- To help establish Kelowna as a destination for Stand Up Paddleboarding

Rental Equipment:

- Stand Up paddle boards
- Inflatable Kayaks
- Inflatable boards for kids
- Boogie boards for kids



Mobile Tent set-up



Grassroots development through events and activities



We own all of the inventory required for daily operations

Kalavida Surf Shop

Equipment and Rental Fees

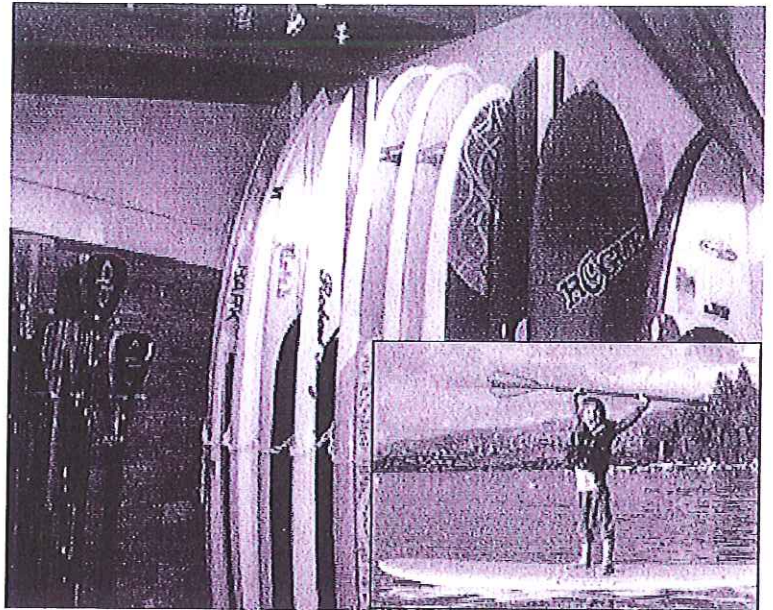
Tugboat Bay

CURRENT INVENTORY:

We currently own a large base of inventory for both of our stores and the following products would be allocated to this location:

- 8 Paddleboards and paddles
- 2 Kayaks and paddles
- 4 kids inflatables
- 2 Boogie Boards
- Frisbees
- Sunscreen
- Towels
- Lifejackets/PFD's for adults and kids

Additional equipment would added based on demand



VENDORS:

Rogue Stand Up Boards
Kelowna, BC
Cory Ferguson
250.308.2247

Werner Paddles
USA
Nikki Rekman
604.626.6922

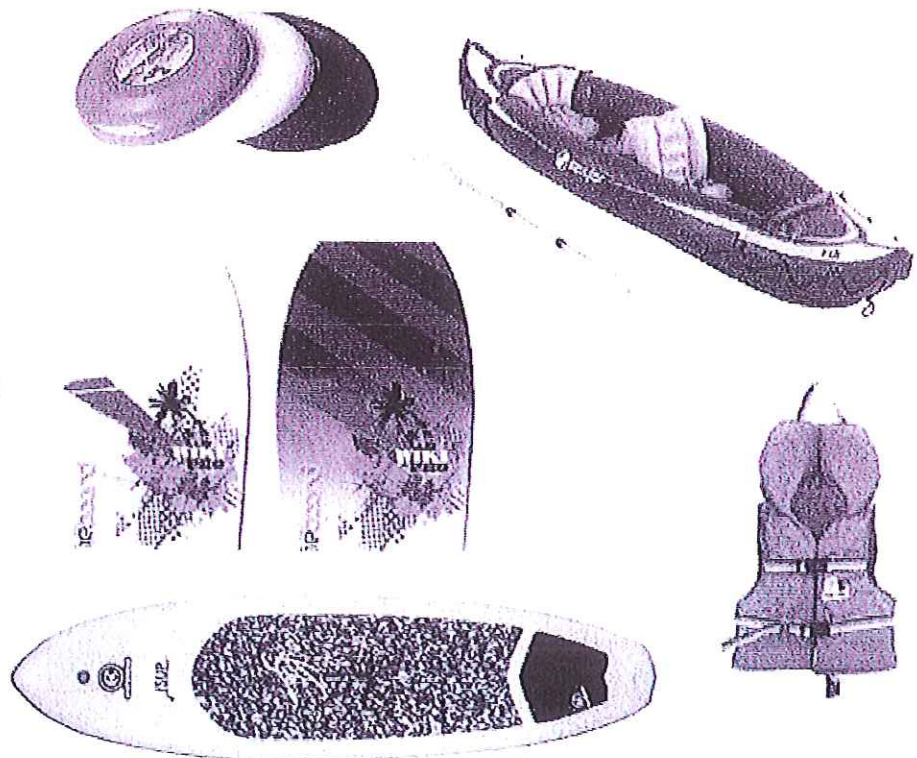
C4 Waterman (Inflatables)
Caledon, ON
John Kuyper
647.281.5719

Wet Products (Frisbees, sunscreen)
USA
Jeff Salerno
949.855.6584

Additional vendors supplied as necessary

RENTAL PRICES:

	1hr	2hr	4hr	Day
Paddleboard/Paddle	\$25	\$35	\$45	\$65
Kayak and Paddle	\$25	\$35	\$45	\$65
Boogie Board	\$10	\$15	\$20	\$25
Inflatable board (kids)	\$10	\$15	\$20	\$25



Kalavida Surf Shop

Profile of Stand Up Paddleboarding Tugboat Bay



Overview of the Sport's Development:

The sport has been growing steadily by close to 100% per year in the US and now that the sport is catching on in Canada, we expect the Okanagan to experience a similar pattern.

By combining the efforts of a retail/rental store footsteps from the beach, residents and tourists alike will be able to try out the sport without any logistical challenge and that will help the sport grow more organically.

Easy access to try the sport is one of the key ingredients to the growth of the sport locally. Our store in Vernon has been able to develop one of the strongest local SUP communities in the country due in part to our location near the beach.

What does SUP offer?

1. Healthy lifestyle option for all ages, male and female
2. Fitness benefit for general public and athletes
3. A new way to explore the lakes and surrounding areas
4. Social community based around health and fitness
5. A fun, pleasurable summer activity for residents and tourists to participant in
6. A great way for a family to spend a day at the beach

Demographic Overview:

Women friendly - 65% of renters are female

Family friendly - Great for adults and kids

From: Okanagan/Shuswap Region

Primary Growth areas: Vernon, Kelowna, Penticton

Sport appeals to all ages, male and female equally

