

Presented by: The Manager
Presented: April 17, 2023
Drafted by: S. Layne

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2023-22

An Ordinance Authorizing the Eaglecrest Ski Area to Enter Into a Franchise Agreement with Alaska Rainforest Sanctuary, LLC dba Kawanti Adventures, for Operating the Alaska Zipline Adventure Canopy Tour.

WHEREAS, in 1975 and 1983, the federal Land and Water Conservation Funds were used to develop Eaglecrest Ski Area, which imposed permanent restrictions prohibiting conversion of any property interest, like a lease, to private use, *see* 54 U.S.C.A. § 200305(f)(3); 36 C.F.R. § 59.3; LWCF Financial Assistance Manual at page 103 (3/11/2021); and

WHEREAS, the CBJ Charter allows the Assembly to authorize franchises by ordinance, CBJ Charter 5.2(c); and

WHEREAS, Black’s Law Dictionary defines franchise as “To grant (to another) the sole right of engaging in a certain business or in a business using a particular trademark in a certain area”; and

WHEREAS, the Eaglecrest Ski Area solicited statements of interest from local vendors for Eaglecrest Ski Area Summer Development and only received one response to develop the Zipline activity from the current vendor, **Alaska Rainforest Sanctuary, LLC (ARS)** due to the specialized nature of the activity and infrastructure required; and

WHEREAS, **Alaska Rainforest Sanctuary, LLC** expressed interest in a continued partnership with the CBJ and Eaglecrest Ski Area; and

WHEREAS, the following franchise authorization is in the best interest of the public.

THEREFORE BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Franchise Terms. The franchise is subject to the following essential terms:

(a) **Application of 11 CBJAC 07, Commercial Use of Eaglecrest Ski Area.** The provisions of 11 CBJAC 07.010-100 apply to this franchise authorization in addition to the following provisions except when in conflict with a provision of this ordinance.

(b) **Authorized location.** Permittee is authorized to use that portion of Eaglecrest Ski Area that begins approximately 50 yards west of the base of the Ptarmigan Chairlift and ends approximately 150 yards southeast of the Base Lodge at Eaglecrest for the purposes of operating the existing Alaska Rainforest Sanctuary (ARS) Canopy Tour. The Tour consists of a series of platforms in trees connected by ½ inch steel cable and constructed in conformance with the Association for Challenge Course Technology (ACCT) guidelines. Any subsequent alterations, repairs, and/or improvements shall also conform to these guidelines, as applicable. Permittee also is authorized, upon application to and approval by the Ski Area Manager, to construct additional platforms and cables to expand or add to the ARS Canopy Tour in other suitable trees. Permittee also is authorized, upon application to and approval by the Ski Area Manager, to conduct additional tours or operations on the permitted premises, provided that such tours and operations comply with the applicable conditions of this permit. Permittee is also authorized to construct and use an entry and exit path to and from the ARS Canopy Tour location.

- 1) **Facilities and restrooms.** During construction and operations, as applicable, Permittee is authorized to use the following for the purpose of supporting the ARS Canopy tour:
 - a. Use of Eaglecrest’s parking lot for Permittee’s vehicles and Permittee’s employee and customer vehicles.
 - b. Use of a designated passenger drop-off and pick-up zone near Eaglecrest Lodge.
 - c. Use of the lodge’s public restrooms.
 - d. Exclusive use of the Porcupine Lodge main entrance foyer, restroom facilities, rental shop area as well as the slope side entrance and foyer during the ARS Canopy Tour operating season. Shared use of the Porcupine Lodge boardroom sink and hot water will also be allowed during the ARS Canopy tour operating season. Year-round storage in the “bowling alley” storage room of an approximate size of 150 square feet will be provided for ARS Canopy Tour related items.
 - e. Use of Eaglecrest-provided internet communications, heat, hot water, sink for washing dishes, storage space, and electricity reasonably adequate to meet Permittee’s needs.

(c) **Term.** Each franchise term is one year, beginning June 8, 2023. Vendor may request to renew this franchise authorization annually by sending written notice to the Ski Area Manager by 30 days prior to expiration, which shall be granted so long as the vendor is in good standing and a renewal is in the best interest of Eaglecrest Ski Area as determined by the Board of Directors. This franchise authorization is effective for a maximum of five consecutive summer seasons beginning summer season 2023.

(d) **Revocation.** This franchise authorization is revocable upon violation of any of terms of this ordinance or upon failure to comply with other applicable permits, laws, and regulations. This franchise authorization will be revoked for nonperformance in the event that the business does not operate for a summer season without prior written approval from CBJ.

(e) **Compliance with other laws and regulations.** Vendor shall comply with all applicable City and Borough of Juneau, State of Alaska, and federal permits, laws and regulations. Vendor shall ensure compliance and is responsible with this franchise authorization by Vendor's agents, employees, customers, and guests.

(f) **Insurance.** Vendor shall maintain insurance for the risk and the amounts specified below, and shall supply the CBJ Risk Manager—who may modify these requirements on an annual basis when in the best interest of the CBJ—with current certificates of insurance:

- (i) \$4,000,000 in commercial general liability insurance (aggregate) and \$2,000,000 (per occurrence), naming the CBJ as additional insured.
- (ii) **Comprehensive Automobile Liability Insurance.** The coverage shall include all owned, hired, and non-owned vehicles to a one million dollar (\$1,000,000) combined single limit coverage, naming the CBJ as additional insured.
- (iii) Workers compensation insurance, if there are any employees. The policy must include employer's liability coverage of \$1,000,000 per injury and illness, and \$1,000,000 policy limits. This policy shall be endorsed to waive subrogation against CBJ.

(g) **Indemnity.** Vendor agrees to indemnify, defend, and hold harmless the City and Borough of Juneau from any and all claims for injury and damage to persons or property related to or arising out of the Vendor's activities unless such injury or damage is caused by the gross negligence of the City and Borough of Juneau, its agents, employees, officers, or anyone acting on its behalf.

(h) **Hours of Operation and Group Size.** Permittee is authorized to operate a maximum of 20 tours per day, seven days a week. Any change in the number of tours must be approved by the Ski Area Manager.

(i) **General permit fees.** Beginning at the time of the effective date of this permit and for the remainder of the first year of the permit term, Permittee shall pay CBJ an annual permit fee in the amount of six *per centum* (6%) of Permittee's annual gross revenues for the annual permit period ending September 30. For each consecutive renewal year the permit fee in the amount of eight *per centum* (8%) of Permittee's annual gross revenues for the annual permit period ending September 30 of each year. Payments of the percentage of gross revenues described above shall be due October 30 of each year, with the first payment due on October 30, 2023. For purposes of this paragraph, "gross revenues" are defined as the total amount of sales invoiced by Permittee pursuant to this permit. Gross revenues do not include sales taxes or any royalties or commissions, or similar fees or charges, allowed or remitted by Permittee to any tour brokers, agents, or cruise ship companies.

(j) **Fees charged by vendor.** Pursuant to 11 CBJAC 07.040(b)(3)(A), Vendor must submit to the Ski Area Manager a schedule of fees and charges to customers prior to the beginning of each summer operating season.

(k) **Monthly revenue reports.** Vendor must submit to the Ski Area Manager a complete revenue report detailing the gross revenues for each month of operation. Reports are due on or before the last day of the following month. (For example, the February 2023 report will be due on

or before March 31, 2023). Reports shall contain a breakdown of the gross receipts by the activity which produced such receipts.

(l) **Audit and inspection of records.** The CBJ may once per annual term cause an audit of Vendor's gross revenues to be made by a Certified Public Accountant of the CBJ Finance Director's selection or a CBJ auditor. If the audit reports that less gross revenues were reported by the Vendor in a given year period than were actually received, Vendor shall bear the cost of the audit and remit the amount of the underpayment to the Eaglecrest Ski Area. Otherwise, the Eaglecrest Ski Area shall bear the cost of the audit. The Eaglecrest Ski Area shall have the right at all reasonable times during the term of this franchise authorization, upon 10 days written notice, to inspect, review, and copy, records of Vendor that are necessary to verify Vendor's compliance with its fee obligations.

(m) **Ownership, maintenance and removal of improvements.** All improvements installed by Vendor are the property of Vendor. Vendor shall keep Vendor's improvements in neat, clean, sanitary and safe condition. Vendor must remove improvements on or before the date of permit expiration, or within 30 days after permit termination. At any time during the term of this franchise authorization, upon Vendor's consent, Eaglecrest Ski Area may purchase the improvements or consent to allow improvements to remain on site after expiration or termination.

(n) **Taxes and impositions.** During the term of this franchise authorization, Vendor shall pay all CBJ taxes which may be imposed or assessed, including tax on sales and services and business personal property. Nothing in the preceding sentence shall affect Vendor's legal rights to appeal any tax imposed or assessed on it by CBJ.

(o) **Permit transfer.** Pursuant to 11 CBJAC 07.030(e), business may only be conducted under this franchise authorization by Alaska Rainforest Sanctuary, LLC and this franchise authorization may not be sold, assigned, leased, rented, mortgaged or otherwise transferred unless Vendor's entire business interest in Alaska Rainforest Sanctuary, LLC is transferred to another party. The Vendor or the transferee shall submit a written application which shall be approved if application satisfies all of the reasonable requirements applicable to an original application. No credit will be given to the transferee for any permit payments made to CBJ by the Vendor.

(p) **General operating requirements.** Pursuant to 11 CBJAC 07.080(b), Vendor is responsible to the CBJ for their actions and those of agents, employees and customers while engaged in franchise authorization activities, and the following operating requirements apply to the permit unless otherwise addressed:

- (i) Signs may be posted in accordance with CBJC 49.45 *et. seq.* and with the Ski Area Manager's written permission and Board of Director approval, which must not be unreasonably withheld.
- (ii) The Vendor must promptly notify the Ski Area Manager of any accident, injury, or claim relating to the franchise activity.
- (iii) Vendor shall promptly dispose of all litter found on and near the authorized location.
- (iv) All vehicles under the control of the Vendor shall be lawfully operated and parked while the Vendor is engaging in franchise activities. The Vendor is responsible for following all parking restrictions and requirements.

(q) **Casualty.** Should the authorized location be destroyed or so badly damaged by fire or other casualty during the initial term or any renewal term of this franchise authorization making the premises unusable for the intended purposes, the franchise authorization is terminated.

(r) **Vendor's confidential information.** The parties acknowledge that as a result of Vendor's operations under this franchise authorization, CBJ may acquire information regarding Vendor's business that may be protected as confidential under state or CBJ law. Vendor acknowledges and understands that the CBJ is subject to the Alaska Public Records Act (A.S. 40.25.120) and that all documents received, owned or controlled by the CBJ in relation to this franchise authorization must be made available for the public to inspect upon request, unless an exception applies. It is Vendor's sole responsibility to clearly identify any documents Vendor believes are exempt from disclosure under the Public Records Act by clearly marking such documents "Confidential." Should the CBJ receive a request for records under the Public Records Act applicable to any document marked "Confidential" by Vendor, the CBJ will notify Vendor as soon as practicable prior to making any disclosure. Vendor acknowledges it has five (5) calendar days after receipt of notice to notify the CBJ of its objection to any disclosure, and to file any action with any competent court Vendor deems necessary in order to protect its interests. Should Vendor fail to notify the CBJ of its objection or to file suit, Vendor shall hold the CBJ harmless of any damages incurred by Vendor as a result of the CBJ disclosing any of Vendor's documents in the CBJ's possession. Additionally, Vendor may not promise confidentiality to any third party on behalf of the CBJ, without first obtaining express written approval by the CBJ.

(s) **Choice of law, jurisdiction.** The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska shall be the exclusive jurisdiction for any action of any kind and any nature arising out of or related to a franchise agreement. Venue for trial in any action shall be in Juneau, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the parties. Vendor specifically waives any right or opportunity to request a change of venue for trial pursuant to A.S. 22.10.040.

(t) **Other terms.** The Eaglecrest Ski Area may add additional terms that are in the best interest of the City and Borough of Juneau.

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2023.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk