

Issue Analysis Form (rev. July 2013)



Date: November 14, 2018
Item: Tree Time Adventures lease @ Scott Park
Lead Department(s): County Administration
Contact Person(s): Jeffrey Stoke, Deputy County Administrator

Current Status

Mr. John Bogue, of Tree Time Adventures, Inc., is requesting to lease County property at Scott Park for an outdoor adventure park. The park would require 130 acres identified within the Scott Park boundaries. The lease originally approved by the Board on July 10 has been revised and, as such, requires a new public hearing. Details of the new terms are contained within the lease for Board of Supervisor consideration. One major change is expanding the lease area from 30 acres to 130 acres. A public hearing is required for the County to consider leasing County property to a private entity. The public hearing with proper notice will take place on Wednesday, November 14 at the Board meeting.

Government Path

Does this require IDA action?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does this require BZA action?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does this require Planning Commission action?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	passed August 23
Does this require Board of Supervisors action?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does this require a public hearing?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	November 14
If so, before what date?	No time deadline.		

The project will request County Board approval of the lease terms through a public hearing process. The project was approved for a special exception through the Planning Commission on August 23. Special exception for Board of Supervisors consideration was tabled until the November 14 lease public hearing.

Fiscal Impact Statement

The draft lease indicates that the County would receive 6% of the annual gross revenue from the project as a lease payment after the first year. Tree Time Adventures, Inc. would pay for all improvements (road, parking, electric, office) and utilities at the site.

County Impact

The project is aligned with Scott Park master plan. Proposed property to be leased is property the County cannot use for ball fields due to water features and topography. Staff sees potential adventure park as complimentary use to sports tourism. County trails and ancillary features could be co-mingled with the private project.

Notes

"Go Ape" business in James City County has a similar business agreement with private entity leasing County property for outdoor adventure park.

**LEASE AGREEMENT FOR A PORTION OF SCOTT PARK
BETWEEN THE COUNTY OF PRINCE GEORGE, VIRGINIA
AND TREE TIME ADVENTURES, INC.**

THIS LEASE AGREEMENT ("Lease") made this ___ day of ~~June~~November, 2018, by and between the **COUNTY OF PRINCE GEORGE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (~~"hereinafter referred to as "~~"County") located at 6602 Courts Drive, Prince George, Virginia 23875, and **TREE TIME ADVENTURES, INC.**, (~~hereinafter referred to as "TTA"~~), a Virginia subchapter S Corporation, located at _____.
("TTA") d/b/a _____ with a business address of _____

WHEREAS, the County is the fee simple owner of a 130 +/- acre tract of land located at Scott Park which is currently wooded and undeveloped and which is more particularly described on a map attached as Attachment A; and

WHEREAS, TTA desires to construct improvements within a portion of such site and to use the property for a commercial venture providing eco-tourism, tree adventures, outdoor adventures and other related activities to the public for a fee.

WITNESSETH:

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the County hereby leases to TTA for its use the following described premises located at Scott Park with the terms and conditions contained herein upon which TTA agrees to comply with all such terms and conditions:

An approximately 130-acre portion of the Scott Park area as defined in Attachment A. The 130 acres shall include but not be limited to use for the Tree Time Adventure project (paid

admission), nature and fitness trails (free admission), disc golf (free admission / disc rental or sale by TTA), special events (paid admission), and other business ventures that align with the outdoor environment. Nature and fitness trails and disc golf course shall remain admission free except when special events and/or tournament play has been scheduled. TTA may close all or a portion of said area when safety could negatively impact visitors (i.e. construction, trail maintenance and expansion, and tree trimming). Reasonable public use of the 100 acres outside the initial TTA 30 acre project being developed shall be allowed so long as such use does not conflict with business activities. Both parties agree that the business shall be conducted in accordance with quality standards consistent with best practices nationally for outdoor aerial parks.

~~An approximately 30-acre portion of the 130-acre area, all as more particularly shown and designated on Exhibit A as "leased area" within the 130-acre area. TTA may request~~

~~amending the lease to add acreage from the County within the 130 + tract of land if business results support such expansion.~~

1. Term: The term of this lease shall be from ~~July~~December, 1, 2018 to ~~June~~November 30, 2023, with two additional five-year automatically renewing terms upon compliance by TTA with all contract terms and a determination by the County that the public's use of the facility is sufficient to maintain the economic viability of the venture. County may terminate this Lease; provided that notice of such termination is given in writing no less than 120 days prior to the Termination Date or expiration of any renewal term.

2. Use: The County grants to TTA the right to use, repair, improve and maintain the leased premises for commercial recreational uses in accordance with the terms of this Lease Agreement. Such use shall be exclusive for TTA's use of trees and air space along zip line routes. ~~Use of ground space beneath the zip lines shall be non-exclusive except for the holding areas used for course access, training/instructional areas and the zip line landing areas.~~The County also grants to TTA the right to use the existing County parking area, for overflow situations and the access road at Scott Park in common with other County uses. During the term of the lease, the County will continue to have access to the leased premises at all times for inspection and other County purposes. TTA, its employees, agents, contractors and customers shall have access to leased property in accordance with reasonable standards set by the County. -TTA accepts the property "as is" and warrants that it has done a diligent inspection of the property and is aware of the condition of all structures and natural features and any environmental or safety issues that may require remediation. TTA shall have use of the area shown in Attachment A.

~~area shown on the attached map entitled _____, dated _____ which is attached as Attachment B, a copy of~~

~~specifically incorporated by reference. The County may use the 130-acre parcel during the term of this Lease Agreement so long as such County use does not unnecessarily interfere with TTA's use on the 30-acre leased~~

~~portion. County will permit reasonable access from other County property to the leased area during TTA's business hours.~~

3. Improvements: ~~Within 12 months of the beginning of this lease~~Within 12 months of the approval of the Special Exception, TTA shall construct at

its sole expense: (1) an all-weather access road to VDOT standards equivalent to or better than the existing access road to Scott Park; and (2) a new parking area constructed to the standards required by the approved site plan and equal to or better than the existing parking area. ~~all as shown on Attachment B, map.~~ TTA shall also construct or install an administrative structure at the entrance to the adventure activities as approved by the County within such time period. TTA may install a prefab or modular structure, as approved by the County and compliant with building codes for its administrative uses.

TTA shall connect with an electric power source at its expense using underground transmission lines. TTA shall construct and install all equipment and improvements necessary to engage in a business offering tree-top adventures, canopy and aerial adventure activities, junior adventures, ground course to include military-type fitness trails, family fun runs, special event runs and charity runs; tightropes, jungle bridges, moving platforms, crab walks, tarzan ropes, nets and zip lines of a quality approved by the County and consistent with national "best practices" for such equipment. All work shall be performed in a good and workmanlike manner, shall be of the highest quality and shall be "fit for its intended purpose." The County must approve a "phasing" schedule

for any construction to be completed after the initial 12 months. ~~Initial construction shall be substantially similar to the design and in the locations shown on Attachment _____~~

TTA shall not erect, place or install any signs without first obtaining advance approval from the County and any required permits.

4. Maintenance: TTA shall maintain the leased premises including all structures and improvements in good condition and cleanliness; shall ~~per~~form necessary repairs and shall prune and maintain trees. TTA will also maintain, at its expense, all of the leased premises during the term of this lease in a manner that protects any future use of the leased premises for general government use and in accordance with safety and maintenance standards set by the County. Security, all utility costs and garbage collection at the leased area will be the responsibility of TTA. TTA will provide on-site restrooms at its expense as required by the Health Department or the Building Official.

5. Hours of Operation: TTA may be open for business 7 days a week from dawn to dusk. ~~Any modification of the hours of operation or seasonal "shutdown" periods or closure for inclement weather must be approved in advance by the County when feasible.~~ TTA shall not serve alcohol on-site during regular business hours. Upon advance approval by the County, TTA may serve alcohol for private special events, upon compliance with ABC special event requirements. The County noise ordinance will be adhered to at all times by TTA.

6. Safety Standards: TTA shall comply with all recommended safety standards for commercial adventure parks as recommended by ANSI/PRCA 1.0-3-2014 American National Safety Standards and as amended from time to time. TTA shall at all times of operation have a minimum of 2 employees on-site, trained and qualified, to assist in safely operating and supervising the activities of customers or such additional employees as recommended by applicable safety standards. TTA warrants that it will employ a sufficient number of legal workers with skills to suitably perform the work. TTA shall promptly notify the County of any damage, accidents or personal injuries arising out of

this lease or within the leased area. ~~TTA shall follow all County and State annual inspection regulations for this project. All equipment such as harnesses and clips for its customers' use shall be purchased new and shall be of a quality consistent with standards used by ANSI/PRCA 1.0-3-2014 American National Safety Standards for Canopy Zip Lines and Aerial Adventure Parks. TTA's operations and equipment shall be audited for safety and code and regulatory compliance at least 3 times a year at TTA's expense by an independent auditor of rope courses or other commercial activities similar to those offered by TTA. The County shall approve the auditor in advance of beginning work. All equipment such as harnesses and clips for its customers' use shall be purchased new and shall be of a quality consistent with standards used internationally by mountain climbers and workers in "above-ground" jobs at risk of falls.~~

Customers shall be limited by size and age in accordance with normal commercial standards for this type of activity. TTA shall require its employees to complete safety and inspection logs in accordance with normal commercial standards for this type of activity.

7. Compliance with Site Plan Submissions and Approval: TTA shall submit a detailed site plan for use of the leased property and shall comply with all requirements set forth in the site plan. ~~The County must be notified in advance of any plan to clear trees, vegetation or timber from the leased area. The County must approve in advance the cutting of trees with a diameter greater than 10 inches when measured at 4 feet above ground level. When clearing for foot trails and exercise paths throughout the area every reasonable effort should be made to preserve mature timber. The County must approve in advance any plan to clear trees, vegetation or timber from the leased area.~~

8. Concessions: TTA may sell related merchandise, equipment and food items on the

leased property approved by the Virginia Department of Health and the Virginia Department of Agriculture and Consumer Services.

- 9 Permits: In advance of performing any work, TTA shall obtain, at its expense, all applicable permits, approvals or other governmental authorizations. TTA shall promptly file for any necessary Special Exception approvals and the lease shall be contingent on obtaining an appropriate Special Exception within 6 months of the signing of the lease.

10. **Deadline for Completion:** TTA shall open for business no later than 12 months from the date of the Special Exception approval~~is Contract~~. Time is of the essence in completing any of the obligations contained in this lease.

11. **Rent:**

a. TTA shall pay no rent during the first twelve months of this Lease Agreement in consideration of performing its obligations to construct improvements to Scott Park required by this lease. In subsequent years, TTA shall pay the County 6% of gross receipts generated at Scott Park annually in quarterly payments.

b. TTA shall also pay all taxes, assessments or other charges in connection with its use of the leased premises.

c. Utilities shall be at the sole expense of TTA.

12. **Passes and Discounts:** TTA shall annually provide 50 free passes to the County's Parks and Recreation Department for use by Prince George County students and County special needs children.

13. **Insurance:**

a. TTA shall maintain comprehensive liability insurance insuring against all risks arising out of its business activities using the leased premises and will name the County, its agents and employees, as additional insureds, in a form and with an insured amount as approved by the County with minimum coverages as follows:

(i) Comprehensive General Liability insurance

General Aggregate - \$1,000,000

Occurrence Based Deductible allowed - \$1,000

Coverage and Limits

Premises and operations - \$1,000,000

Products and completed operations - \$1,000,000

Independent contractors - \$1,000,000

Contractual — Leases - \$1,000,000

Explosion, collapse, underground hazards - \$1,000,000

Personal injury and advertising injury - \$1,000,000

Real Property and Personal Property Damage - \$500,000

Contractual Indemnity — Hold Harmless - \$1,000,000

Fire Damage (any one fire) - \$50,000 Medical

Expenses (any one person) - \$50,000

(ii) Automobile Liability

Combined Single Limit - \$1,000,000

Includes owned, hired and non-owned motor vehicles

(iii) Excess Umbrella Liability — \$1,000,000

(iv) Worker's Compensation Coverage required by the Virginia Law

b. TTA shall indemnify, defend and hold harmless the County and its agents and employees from any demands, claims, costs or expenses which are made or incurred by the County arising out of TTA's use of County property.

c. TTA shall require all participants and guardians to sign appropriate releases and assumption of risk waivers in forms approved by the County either written or electronic.

14. No Third-Party Beneficiary: This Agreement is entered into solely for the benefit of TTA and County. No third party shall be deemed a beneficiary of this Agreement.

15. Assignment: This lease or any portion of the lease may not be assigned by TTA to any person or entity for any reason.

16. Termination: The County may terminate this lease with ~~90~~120-days' notice to TTA for any failure to comply with the material terms of this lease where TTA's failure continues for ten (10) calendar days after written notice from the County so long as no similar failure to perform has occurred within the previous twelve (12) months. Upon termination, TTA shall perform required "de-installation" procedures to remove all equipment and restore the property to as similar condition as existed before the property was leased as is reasonably practical. If the lease is terminated by the County within the first five-year term, the County shall refund to TTA 50% of the cost of constructing the access road and parking area.

17. No County Representations: The County makes no warranty or representation, express or implied, in respect to the leased premises or any part thereof, either as to its fitness for use, design or condition for any particular use or purpose or otherwise, or as to quality or the material or workmanship therein, latent or patent, it being agreed that all such risks are to be borne by TTA.

~~18. Performance Bond: TTA will supply the County with a performance bond guaranteeing faithful performance of this contract and completion of all required improvements.~~

~~19~~18. Venue: Any legal action arising out of this contract shall be filed by either party only in the Circuit Court of Prince George County, Virginia.

~~20~~19. Designated Contact: TTA designates John Bogue, President, (title, address) as its manager and recipient of notices for the Prince George TTA business and the County designates Keith Rotzoll as the County contact for any matters related to the activities permitted by this lease.

20. Notices: Notices shall be sent to the following addresses or other address in respect to the parties as that party may, from time to time, designate in writing:

County: Keith Rotzoll, Director of Parks and Recreation

Prince George County, VA

11100 Old Stage Road

Prince George, VA 23875

TTA: Tree Time Adventures Inc.

2482 Miry Run Road

Sutherland, Virginia 23885

21. Severability: If any provision of this lease is determined to be invalid or illegal by a court or administrative agency or body, that provision shall be severed from the lease and shall not affect the remainder or any other provision of this lease.

(REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the _____ and County have each executed this Agreement by officials authorized to legally bind each party.

COUNTY OF PRINCE GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia (Lessor)

By _____

Title

APPROVED AS TO FORM:

Steven L. Micas, County Attorney

STATE OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ___ day of ~~November~~ July, 2018, by _____, on behalf of the COUNTY OF PRINCE GEORGE, VIRGINIA.

My commission expires:

Registration Number:

Notary Public

TREE TIME ADVENTURES, INC., a Virginia
subchapter S corporation

By _____

Title

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of ~~November~~ _____ by _____, _____ on behalf of Tree Time Adventures, Inc., a Virginia subchapter S corporation.

My commission expires:

Registration Number:

Notary Public

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BETWEEN THE COUNTY OF PRINCE GEORGE, VIRGINIA
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ATTACHMENT A



**County of Prince George
Board of Supervisors**

Notice is hereby given to all interested persons that the Prince George County Board of Supervisors will hold a public hearing on Wednesday, November 14, 2018, beginning at 7:30 p.m. in the Board of Supervisors Meeting Room, Third Floor of the County Administration Building, 6602 Courts Drive, Prince George, Virginia, (located at the intersection of Laurel Springs Road and Courts Drive in the County Government Complex) pursuant to Title 15.2-1800, Code of Virginia (1950), as amended, to consider: Rescinding a previously proposed lease to Tree Time Adventures, Inc. for 30 acres at Scott Park approved by the Board of Supervisors on July 10, 2018 and the conveyance of a replacement lease for approximately 130 acres at Scott Park to Tree Time Adventures, Inc. to operate an outdoor aerial park and related activities. The initial lease term shall be from December 1, 2018 to November 30, 2023 with the County having the option of renewing the lease for two consecutive five year terms. A copy of the proposed lease is available for review in the Office of the County Administrator/Clerk to the Board of Supervisors, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, Monday through Friday from 8:30 a.m. until 5:00 p.m.; Tel. 722-8600. All interested persons shall be given an opportunity to be heard at the public hearing.

Percy C. Ashcraft
County Administrator