



Lewis and Clark Marina

**Prospectus for Marina, Restaurant,
Retail, Recreation and other Services
Yankton County, South Dakota**

**Lewis and Clark Recreation Area
South Dakota Department of Game, Fish and Parks
Division of Parks and Recreation**



DEPARTMENT of GAME, FISH, AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

October 22, 2014

Dear Prospective Concessionaire:

In southeastern South Dakota sits a most unique and popular outdoor destination. Located on the Missouri River next to Gavins Point Dam is Lewis and Clark Recreation Area. This park has proven to be the people's choice amongst opportunities for about any type of outdoor recreation.

Lewis and Clark Marina is located adjacent to Gavins Point Dam along the north shore of Lewis and Clark Lake on the Missouri River. The Marina offers top quality access to Lewis and Clark Lake. The marina features approximately 400 boat slips, a restaurant, boat rentals, convenience store, and full array of boat services.

The Marina is commercially operated under a lease with the South Dakota Department of Game, Fish and Parks. The docking facilities and equipment for the Marina are owned by the current leaseholder, Russell Marsh of Lewis and Clark Marina, Inc. The existing Concession Agreement will expire on December 31, 2014. The value of the concessionaire's facilities have been established by an appraisal. The terms and conditions of sale are outlined in this prospectus. The Department will consider all proposals that meet the terms covered under this prospectus.

I invite you to read the attached prospectus, visit Lewis and Clark Recreation Area, and consider the opportunity of operating this attractive marina in one of South Dakota's busiest parks. If you have any questions, please call Sean Blanchette with the Division of Parks and Recreation at 605.773.3391 or Jeff VanMeeteren, Lewis and Clark Recreation Area Regional Park supervisor at 605.668.2985.

Sincerely,

A handwritten signature in cursive script that reads "Douglas Hofer".

Douglas Hofer
Director, Division of Parks and Recreation

LEWIS AND CLARK MARINA
Located at Lewis and Clark Recreation Area

Prospectus for Marina, Restaurant,
Retail, Recreation
And other Services

South Dakota Division of Parks and Recreation

Date Issued: October 22, 2014

Offer Must be Received By: 3:00 P.M. Central Daylight Time on
December 8, 2014

Address Proposals to:

Douglas Hofer, Director
South Dakota Department of Game, Fish and Parks
Division of Parks and Recreation
523 East Capitol
Pierre, SD 57501

LEWIS AND CLARK MARINA
Located at Lewis and Clark Recreation Area

Prospectus for Marina, Restaurant,
Retail, Recreation
And other Services

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SECTION I

BUSINESS OPPORTUNITY

FOR MARINA, RETAIL, RESTAURANT, RECREATION AND OTHER SERVICES AT LEWIS AND CLARK RECREATION AREA

South Dakota Division of Parks and Recreation

SUMMARY OF BUSINESS OPPORTUNITY

The purpose of this Summary is to provide a synopsis of the key elements of the Lewis and Clark Marina Draft Concession Agreement which is attached to this Prospectus. In the event of any inconsistency between the terms of the Draft Concession Agreement and this Summary, the Draft Concession Agreement prevails.

NATURE OF BUSINESS AND SERVICES PROVIDED

The Business Opportunity section of this Prospectus describes the commercial visitor services and essential improvements required within the Draft Concessions Agreement. The following visitor services will be required:

Minimum Required Services for the Concession

1. A minimum of 400 boat slips for seasonal rental.
2. A minimum of 61 Personal Watercraft docks for seasonal rental
3. All rental slips must have water and security services. At least 80 percent of boat slips must have electrical service
4. A minimum of 4 slips for overnight boat dockage rental.
5. 4 free public use courtesy slips for hourly day time use. .
6. On the water marina fuel sales
7. Operation of a marina sanitary pump out station at no cost to users.
8. A flashing beacon at the mouth of the marina basin and red and green channel marking lights,
9. Covered slip storage for the one Department law enforcement boat and open slip storage for one Department owned service boat at no charge to the Department.
10. Boat rental and basic operating instruction
11. Boat, motor and trailer repair and service.
12. Marina store including curios, souvenirs and boating, fishing and camping supplies and accessories.
13. Trailer storage and off-season boat storage.
14. Restaurant food service.
15. Wireless telecommunication service in the Marina

PROPOSED MINIMUM FEE AMOUNTS

Franchise Fee:

- \$42,000 annually, AND
- Seven percent (7%) of all Gross Receipts in excess of \$700,000 less restaurant sales, AND
- Five percent (5%) of restaurant gross receipts

Promotion Fee

Three percent (3%) of all gross receipts

Repair and Maintenance Reserve

- Two percent (2%) of all gross receipts less restaurant and fuel sales
- One and a half percent (1.5%) of gross receipts on restaurant and fuel sales

TERM OF DRAFT CONTRACT

10 years

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INTRODUCTION

The South Dakota Department of Game, Fish and Parks ("the State") seeks proposals for marina and restaurant concession operations at Lewis and Clark Recreation Area ("the Park"). This Prospectus describes in general terms the existing businesses operations and the future business opportunities for the facilities and services required by the State. Offerors are responsible for reviewing all sections of this Prospectus and, specifically, the terms and conditions of the attached Draft Concession Agreement, including its exhibits, to determine the full scope of a future concessionaire's responsibilities under the Draft Concession Agreement. The State is conducting this solicitation under the authority of ARSD 41:13 - Park Concession Leases. In the event of any inconsistency between the terms of this Prospectus and Draft Concession Agreement, the Draft Concession Agreement will prevail.

The term "concessionaire" as used in this Prospectus refers to the entity that will be the concessionaire under the Draft Concession Agreement. The term "existing concessionaire" refers to Lewis and Clark Marina, Inc., the concessionaire under the existing contract ("Existing Lease").

The mission of the Department of Game, Fish and Parks is to perpetuate, conserve, manage, protect, and enhance South Dakota's wildlife resources, parks, and outdoor recreational opportunities for the use, benefit, and enjoyment of the people of this state and its visitors, and to give the highest priority to the welfare of this state's wildlife and parks, and their environment, in planning and decisions. The Department has the following divisions:

- **Division of Wildlife** manages South Dakota's wildlife and fisheries resources and their associated habitats for their sustained and equitable use, and for the benefit, welfare and enjoyment of the citizens of this state and its visitors.
- **Division of Parks and Recreation** provides diverse outdoor recreational opportunities, acting as a catalyst for a growing tourism economy and preserving the resources with which it is entrusted. This division seeks to accomplish this through efficient, responsive and environmentally sensitive management, and constructive communication with those whom it serves.

The South Dakota State Park system includes 13 state parks, 42 recreation areas, 5 nature areas, 1 historic prairie, 70 lakeside use areas, and 10 marina/resorts. In addition, the Division of Parks and Recreation manages the 114-mile Mickelson Trail, South Dakota's Snowmobile Trail Program, 220 public water access areas and maintains 291 boat ramps with a total of 389 launching lanes.

Additional information on the South Dakota Department of Game, Fish and Parks can be found at <http://www.sdgfp.info>.

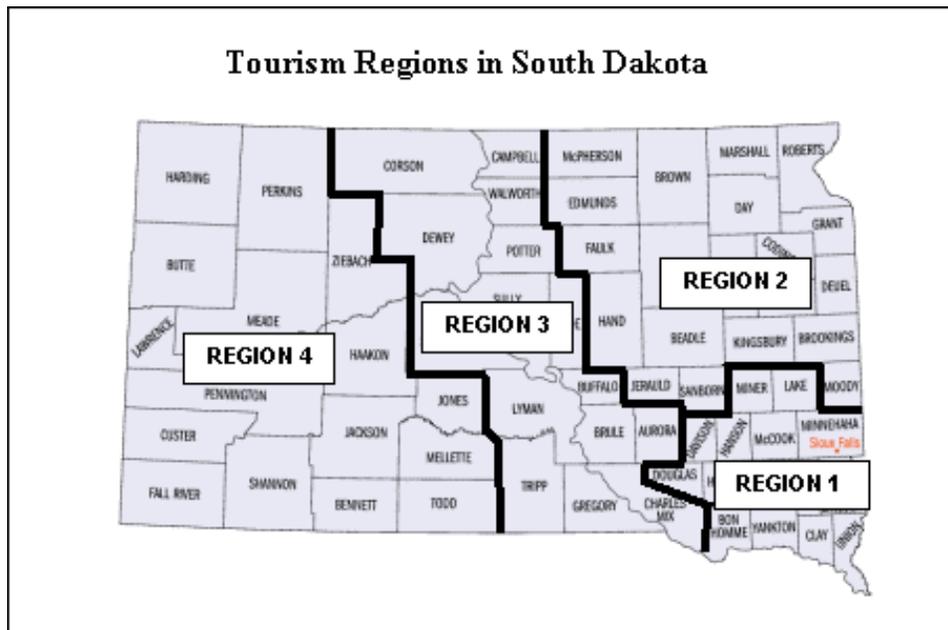
MARKET AREA OVERVIEW

SOUTH DAKOTA TOURISM MARKET

For tourism purposes, the South Dakota Office of Tourism has divided the state into four geographical sectors:

- Southeast South Dakota (Region 1):** Located in the southeastern area of the state, this region contains Sioux Falls, South Dakota’s largest city, a portion of the Lewis and Clark Trail along the Missouri River and many unique attractions. Lewis and Clark Recreation Area is in the south central portion of Region 1 and is situated just above Gavins Point dam on the north shore of the Missouri River.
- Glacial Lakes and Prairies (Region 2):** Located in the northeastern area of the state, this region is named for the many small lakes left behind by glaciers millions of years ago.
- Great Lakes (Region 3):** Four dams built along the Missouri River created Lakes Oahe, Sharpe, Francis Case, and Lewis and Clark. This area is comprised of the counties bordering the Missouri River through the central region of the state.
- Black Hills, Badlands & Lakes (Region 4):** Within this region lies Mount Rushmore National Memorial, Wind Cave National Park, Jewel Cave National Monument, Crazy Horse Memorial, and Custer State Park. All these attractions are surrounded by the Black Hills National Forest. Numerous private and public attractions are found throughout the region. This region generates the vast majority of out-of-state visitors coming to South Dakota.

Exhibit 1 South Dakota Tourism Regions



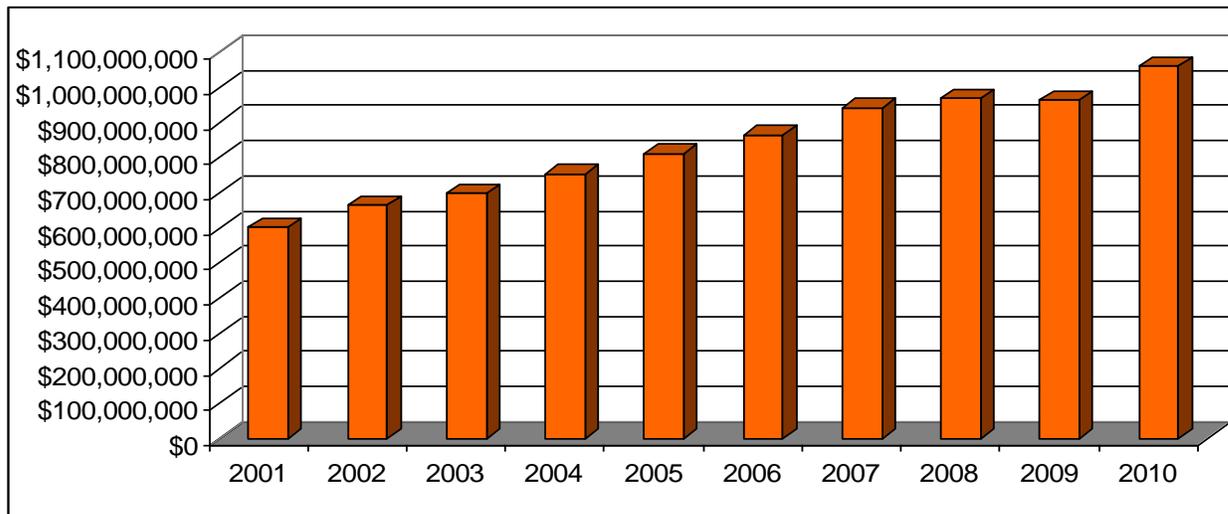
Source: South Dakota Office of Tourism

VISITOR SPENDING

A large proportion of public land in South Dakota is managed by recreation and/or environmentally focused federal government, state, tribal or municipal agencies. The large amount of publicly managed land offers increased opportunities for outdoor recreation and has helped tourism become South Dakota's second leading industry. According to the South Dakota Office of Tourism, approximately 36,000 jobs in 2010 could be traced to the state's tourism industry. The South Dakota Governor's Office of Economic Development estimates the 2009 annual economic impact of tourism to be \$2.65 billion.

Through 2010, the South Dakota Office of Tourism regularly commissioned studies to measure visitor expenditures. In 2010, visitor expenditures in the state totaled over \$1 billion. This figure represents a 10.0 percent increase from 2009. The following chart depicts the long-term visitor spending trend from 2001 through 2010. While these studies have not been commissioned from 2011 to 2013, annual reports and other information are available through the South Dakota Department of Tourism at <http://www.sdvisit.com/>.

Exhibit 2 South Dakota Annual Visitor Spending 2001 to 2010



Source: South Dakota Office of Tourism

Real industry growth is measured by removing the impact of inflation upon expenditure levels. The period from 2001 to 2010 had moderate inflation ranging from -0.4 percent to 3.8 percent with a 2010 rate of 1.6 percent. The following exhibit depicts real growth in visitor spending. .

Exhibit 3 South Dakota Annual Visitor Spending Real Growth 1996 to 2010

YEAR	NOMINAL GROWTH	INFLATION RATE	REAL GROWTH
1996	1.4%	2.8%	-1.4%
1997	1.7%	2.3%	-0.6%
1998	13.8%	1.7%	12.1%
1999	1.4%	2.1%	-0.7%
2000	5.2%	2.5%	2.7%
2001	-3.7%	2.7%	-6.4%
2002	10.2%	1.8%	8.4%
2003	5.3%	2.1%	3.2%
2004	7.8%	3.0%	4.8%
2005	7.6%	3.2%	4.4%
2006	6.9%	4.0%	2.9%
2007	8.8%	2.5%	6.3%
2008	2.8%	5.3%	-2.5%
2009	-0.4%	-2.1%	1.7%
2010	10.0%	1.2%	8.8%
Arithmetic Averages	5.3%	2.3%	2.9%

Source: South Dakota Office of Tourism

The regional compound annual growth rate ("CAGR") ranged between three and six percent from 2001 through 2010.

Exhibit 4 Regional Visitor Spending 1996 to 2010 (in Millions of Dollars)

Year	Southeast (1)	Percent Change	Glacial Lakes & Prairie Lakes (2)	Percent Change	Great Lakes (3)	Percent Change	Black Hills, Badlands, & Lakes (4)	Percent Change	South Dakota	Percent Change
2000	145.5	2%	68.7	3%	58.6	2%	351.7	8%	624.5	5%
2001	146.3	1%	67.3	-2%	61.1	4%	326.5	-7%	601.2	-4%
2002	153.2	5%	70.8	5%	62.2	2%	376.6	15%	662.8	10%
2003	161.4	5%	76.9	9%	62.1	0%	397.5	6%	697.9	5%
2004	169.3	5%	85.0	11%	64.6	4%	433.1	9%	752.0	8%
2005	184.0	9%	90.2	6%	63.7	-1%	471.5	9%	809.4	8%
2006	198.3	8%	93.4	4%	64.2	1%	508.9	8%	864.9	7%
2007	211.5	7%	105.1	13%	72.1	12%	552.3	8%	941.1	9%
2008	205.9	-3%	109.9	5%	92.9	29%	558.3	1%	967.0	3%
2009	194.8	-5%	116.7	6%	85.6	-8%	565.5	1%	962.7	-5%
2010	206.3	6%	126.1	8%	90.8	6%	635.9	12%	1059.2	10%
CAGR		3.7%		6.2%		4.6%		6.4%		5.5%

Note: In 2003, the regional boundaries for the economic impact and occupancy studies were revised. Only data from 1996 has been adjusted for regional comparisons.

Source: *South Dakota Office of Tourism*

LOCAL MARKET AREA

The Local market area for the Lewis and Clark Marina is a combination of a multi-state regional market, statewide market, and the local market consisting of the city of Yankton and Yankton County. Lewis and Clark Recreation Area is a popular destination for residents of Sioux Falls and surrounding communities as well as residents from neighboring states Iowa and Nebraska. It is anticipated that each segment will play a significant role in the overall business plan for this concession opportunity.

Lewis and Clark Marina is located 5 miles west of Yankton along the north shore of Lake Lewis and Clark adjacent to Gavins Point Dam.

Historically, annual water elevations on the lake have remained consistent as Lake Lewis and Clark is considered a “flow through” reservoir mainly to generate power. Flood storage is not a major operating factor. Although lake levels remain constant annually, slight daily fluctuations are experienced at times.

PARK OVERVIEW

Lewis and Clark Recreation Area is a 1,045-acre park with over five miles of shoreline located on the northern shore of Lewis and Clark Lake in southeast South Dakota. It is one of the region’s largest and most popular campgrounds. The Lake area attracts over 2 million visitors each year to its shores for endless camping, boating, sailing, fishing, swimming, hiking and hunting opportunities.

Lewis and Clark Recreation Area consists of the following State-owned facilities:

- 409 paved, electric campsites
- 17 camping cabins
- 4 large group camping areas
- 2 full hook-up volunteer campsites
- Welcome Center
- 18-hole disc golf course
- 12 modern bathrooms with hot showers
- 4 multi-lane boat ramps with docks
- 8 picnic shelters
- 2 swimming beaches
- 4 boater beaches
- 28-target NFAA (National Field Archery Association) certified archery range w/shooting platform
- 6.1 mile paved bicycle/jogging trail
- Soccer field
- 1.2 mile nature trail
- 4.1 mile multi-use trail for equestrian riders, mountain bikers, hikers
- 8 gravel, electric equestrian campsites and corrals
- 2 RV dump stations that include water for flushing and drinking
- 6 playgrounds
- Fish cleaning station
- Half-court basketball court
- Accessible fishing dock
- Amphitheater for weekend programming activities
- Firewood for sale at the park (no out-of-state firewood allowed)
- WiFi (available for a fee at park; free in concession area for marina and resort patrons)
- 45-space catamaran beach storage and launch area
- 2 sand volleyball courts
- 3 horseshoe pits

Winter Activities:

- ice fishing
- snowmobiling
- cross country skiing
- sledding
- snowshoeing
- bird watching

Additional nearby State-Owned Recreation Areas:

Pierson Ranch Recreation Area – 59-acre park located 1 mile east of Lewis & Clark Marina

- 67 electric campsites
- 2 camping cabins
- RV dump station that includes water for flushing and drinking
- 3 modern bathrooms with hot showers
- 4 picnic shelters (1 with kitchenette)
- Paved bicycle/jogging trail which connects to Lewis and Clark Recreation Area trail
- Basketball/tennis court
- Softball and soccer fields
- 9-hole disc golf course
- Amphitheater for weekend programming activities
- 4 playgrounds
- Sand volleyball court
- Horseshoe pit

Chief White Crane Recreation Area – 195-acre park located 4 miles east & south of Lewis & Clark Marina

- 144 paved, electric campsites
- 2 tent campsites
- 10 camping cabins
- 4 modern bathrooms with hot showers
- Half-court basketball court
- Amphitheater for weekend programming activities
- 4 playgrounds
- Picnic shelter
- RV dump station that includes water for flushing and drinking
- Sand volleyball court
- Horseshoe pits
- 1.1 mile crushed limestone bicycle/jogging trail

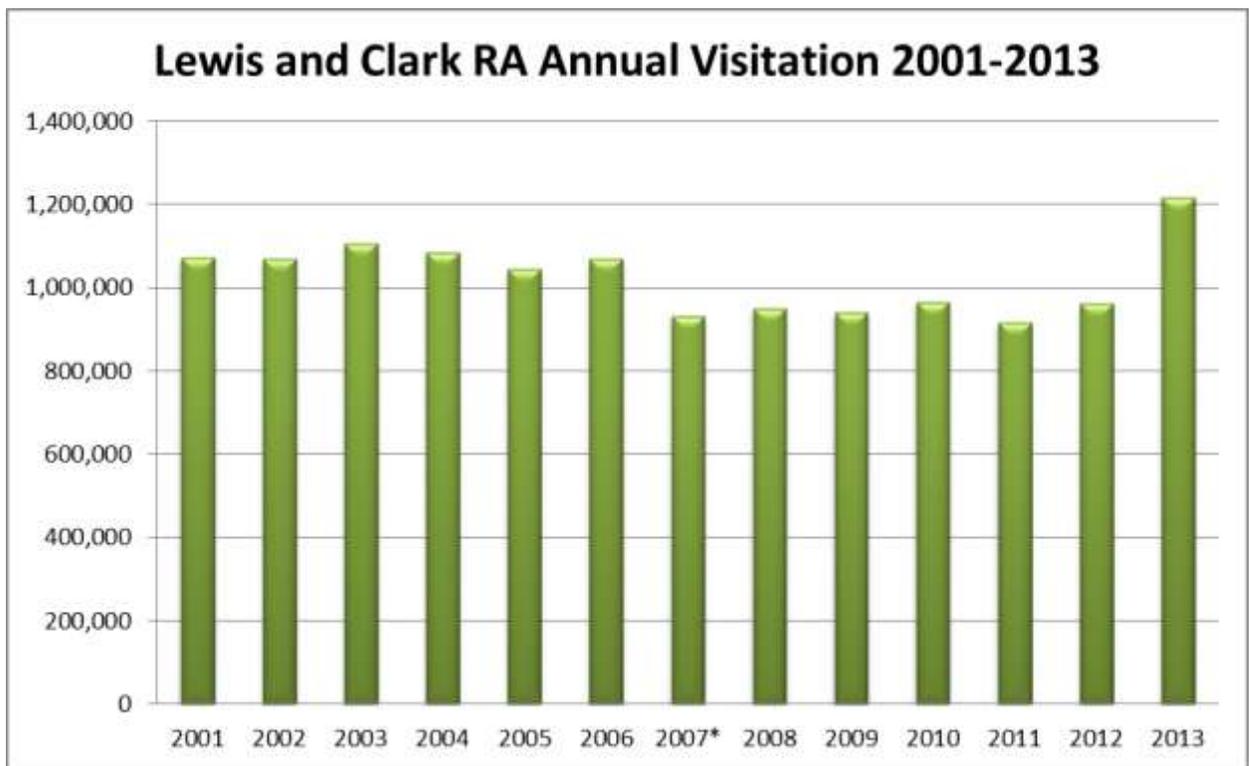
Distance to area attractions:

- Gavins Point National Fish Hatchery & Aquarium – 1.75 miles
- Gavins Point Dam – 3 miles
- Corps of Discovery Welcome Center – 9 miles
- Yankton Chan Gurney Airport – 9 miles
- Sioux City, Iowa – 65 miles
- Sioux Falls, South Dakota – 80 miles
- Omaha, Nebraska – 170 miles
- Minneapolis, Minnesota – 330 miles

VISITATION

Exhibit 5 illustrates total annual visitation at Lewis and Clark Recreation Area from 2001 – 2013. Although the graph suggests a drop in annual visitation in 2007, this is more attributable to the modification of counting methods which were implemented in that year. Lewis and Clark Recreation Area is the 2nd busiest State Park area in South Dakota behind only Custer State Park in the Black Hills. Almost 1,000,000 people visit Lewis and Clark RA parks, boat ramps, campgrounds, Marina and Resort every year.

Exhibit 5 Annual Park Visitation



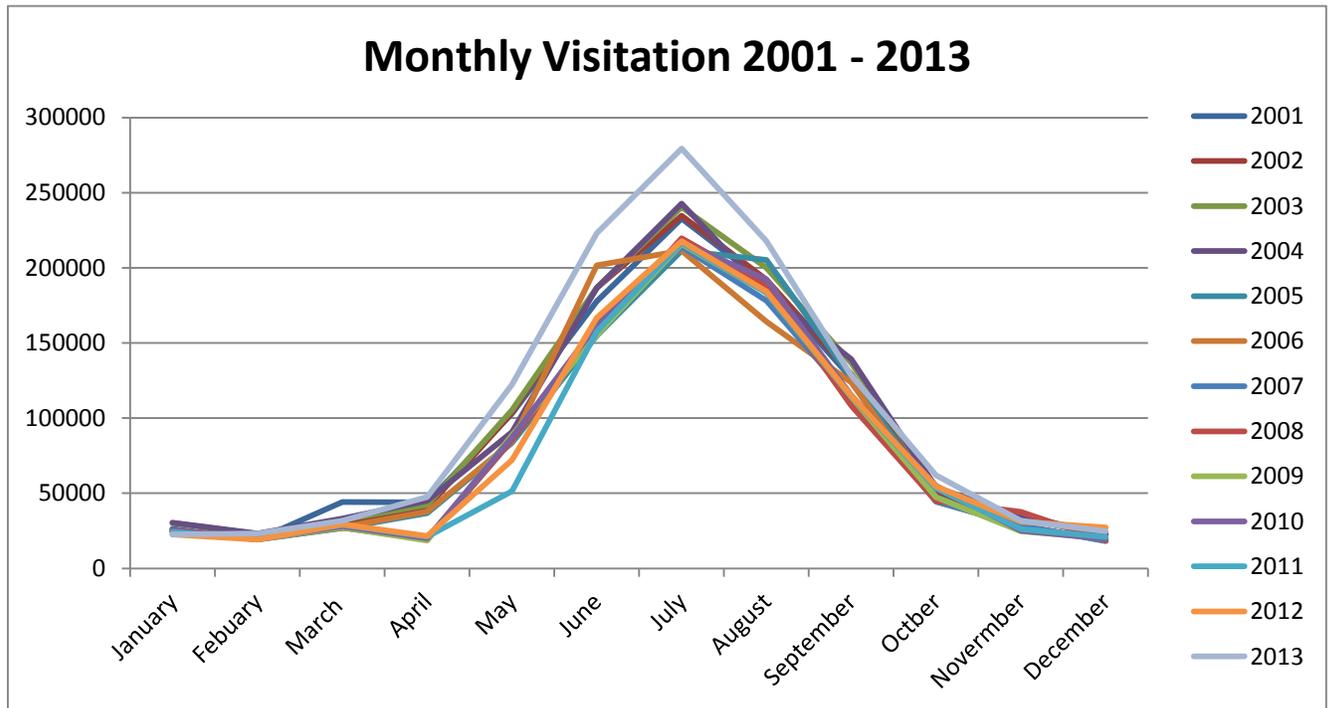
* Counting method was adjusted based on entrance survey data.

Significant flooding occurred along the Missouri River in 2011. While Lake Lewis and Clark remained unaffected, visitation numbers were slightly impacted.

Source: State of South Dakota

Exhibit 6 illustrates Park visitation by month from 2001 to 2013 for Lewis and Clark Recreation Area. Peak months for visitation are June through August, with May and September considered shoulder months. The remaining months (October through April) are considered off-season, with lower levels of visitation.

Exhibit 6 2001 – 2013 visitation by Month



Source: State of South Dakota

EXISTING CONCESSION OPERATION

The exhibit below provides a summary of facilities and services currently offered within the Marina lease area.

Exhibit 7 Facility and Services Summary

Marina	Approximately 400 marina boat slips ranging from 18' to 48' in length, electrical and water service, 61 PWC docks, WiFi, sanitary boat pump out, on-the-water fuel sales, courtesy dock, boat rentals
Restaurant	Full restaurant and bar
Retail	Convenience store offering groceries, snacks, beverages, ice, boating supplies and marina merchandise
Service Department	Boat and trailer service and repair, winterization, parts, launch/retrieve service

Source: State of South Dakota

MARINA LEASE AREA AND FACILITIES



Photo Courtesy: Dave Tunge, Dakota Aerials

Above is an aerial photo of the Marina lease area and associated facilities. All docks are identified on the map by letter or otherwise. All buildings within the Lease Area are owned by the Department and leased to the Concession operation with the exception of the on-site manager's residence. Facilities are listed below by number:

1. West Comfort Station: 4 stalls, 4 showers and 2 sinks in both men's and women's rooms
2. Restaurant: Approximately 4,600 total square foot interior, outdoor seating, office and storage space as well as multi-stall men's and women's restrooms. The restaurant building underwent a significant remodel in 2010 which included new windows and siding, new exterior seating and sidewalks and landscaping. *Picture was taken prior to remodel.*
3. North Picnic Shelter: Approximately 1,500 square feet. Can be used for larger gatherings
4. North Comfort Station: 2 stalls, 3 showers and 1 sink in both men's and women's rooms
5. On-site manager's residence: 27' x 60' modular home
6. C-Store/Office Building: 4,152 square foot building including large C-store area, offices, parts and storage rooms, employee restrooms. Building underwent significant remodel in 2010 which included expanded C-Store area, new siding, roof, doors and windows as well as new sidewalks and landscaping. *Picture was taken prior to remodel.*

7. Shop Building: 9,760 square foot building with 20' sidewalls
8. Fenced in boat storage yard approximately 1.75 acres
9. West Picnic Shelter: Approximately 600 square feet. Located near Hobie beach

A multi-lane boat ramp and boat lift well basin are located directly south of the C-Store office building. The marina complex contains approximately 425 vehicle parking spaces and 40 vehicle/trailer parking spaces which are located by the Shop building. The grass area to the north of the shop building serves as overflow parking and can accommodate another 40 vehicle/trailer parking spaces.

Exhibit 8 Lewis and Clark Marina Convenience Store and Office Building





Exhibit 9 Lewis and Clark Marina Docks







Exhibit 10 Lewis and Clark Marina Restaurant









In 2010, The Department completed a renovation of the exterior of the restaurant building. The project consisted of new siding, windows, doors, patio, sidewalks and new retaining wall and landscaping. Over the course of 2012 and 2013 all 5 rooftop HVAC units were replaced with new commercial units. The Department has plans to replace the roof of the restaurant building prior to the 2015 operating season.

HISTORICAL CONTRACT REVENUES

Exhibit 11 Historical Lease Revenue

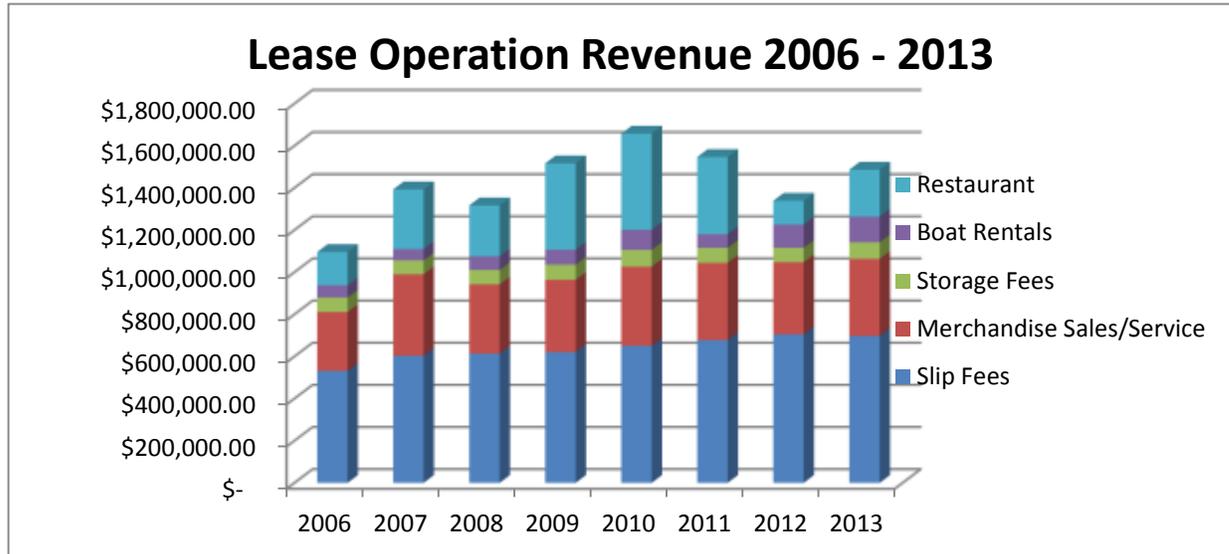


Exhibit 12 Historical Restaurant Revenues

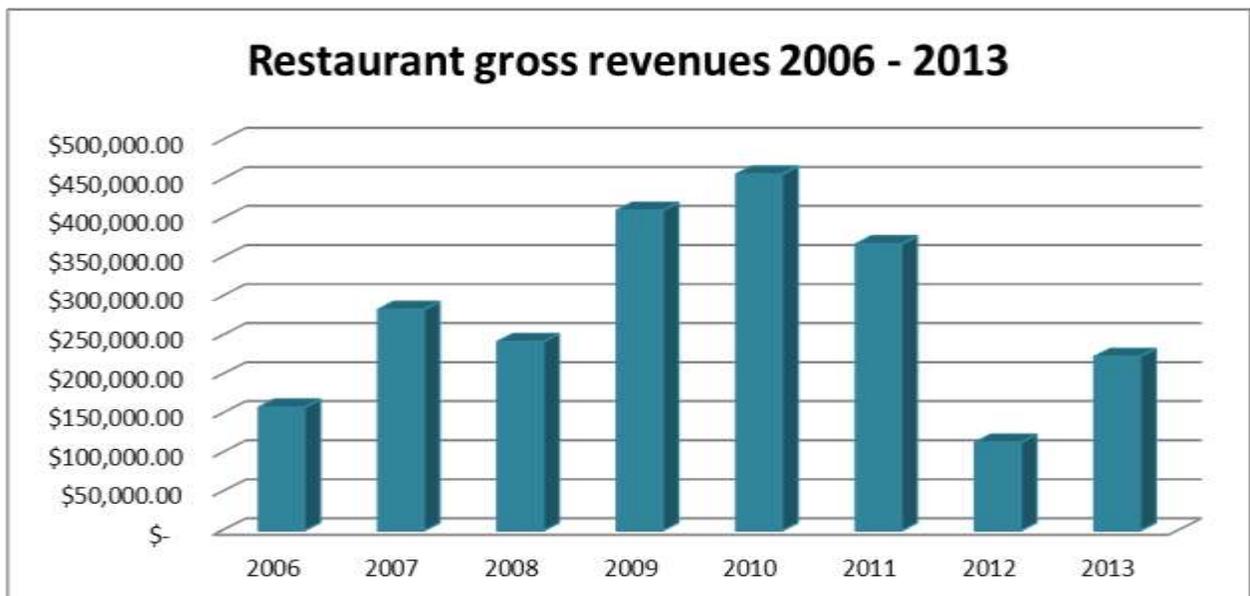


Exhibit 11 displays annual revenues for the entire lease operation from 2006 to 2013. Total marina revenue has grown since the onset of the current concession agreement. Slip fee revenues experienced a jump in 2007 due to the addition of slips, but have remained relatively steady since that time.. With the exception of the restaurant, revenue streams have shown steady growth over this time period. Exhibit 12 displays only annual restaurant revenues for the same time period. 2005 is excluded as separate

restaurant revenue numbers are not available. Restaurant revenues have fluctuated largely due to inconsistency and turnover of operators. The restaurant was operated under a sublease from 2006 – 2008 and revenues did not top \$300,000 in any one of those years. However, under the management of a different sublessee from 2009 – 2011, revenues grew significantly and were over \$350,000 all three years. 2010 was the best year ever at the Lewis and Clark restaurant when it generated \$456,000 in revenue during seasonal operation. The restaurant was managed by Marina staff in 2012 and 2013.

FUTURE OPERATIONS

The exhibit below provides a summary of facilities and services that are required under the Draft Concession Agreement.

Exhibit 13 Future Operations

Minimum Required Accommodations, Facilities and Services

1. A minimum of 400 boat slips for seasonal rental.
2. A minimum of 61 Personal Watercraft docks for seasonal rental
3. All rental slips must have water and security services. At least 80 percent of boat slips must have electrical service
4. A minimum of 4 slips for overnight boat dockage rental.
5. 4 free public use courtesy slips for hourly day time use.
6. On the water marina fuel sales
7. Operation of a marina sanitary pump out station at no cost to users.
8. A flashing beacon at the mouth of the marina basin and red and green channel marking lights,
9. Covered slip storage for the one Department law enforcement boat and open slip storage for one Department owned service boat at no charge to the Department.
10. Boat rental and basic operating instruction
11. Boat, motor and trailer repair and service.
12. Marina store including curios, souvenirs and boating, fishing and camping supplies and accessories.
13. Trailer storage and off-season boat storage.
14. Restaurant food service.
15. Wireless telecommunication service in the Marina

Additional Authorized Services:

1. Boat, motor and boat trailer sales and brokerage.
2. Licensed off-sale beer sales between 7:00 a.m. and 11:00 p.m.
3. Licensed on-sale wine and liquor sales at the Restaurant.
4. Meeting room service.
5. Houseboat rental,
6. Boat slip TV hookup
7. Sailing instruction,
8. Tour boat service
9. Boat tow service

SUMMARY OF REQUIRED INVESTMENT

The required investment of the next concessionaire is in accordance with the terms of the Settlement Agreement provided in Section 4 of this prospectus. The sale price was established by an appraisal in accordance with the 1990 version of Administrative Rule 41:13 to which the current Concession Agreement is subject. The lease offered will be subject to the 2005 version of ARSD 41:13 according to which the valuation process of the concessionaire facilities upon transfer to a successor shall be based on an appraisal of Concessionaire Facilities. This is a competitive process and the terms of the sale will be the same for all interested parties. This investment includes the purchase of real property and personal property.

The purchase price for this opportunity is set at \$2,937,000.00 for Concessionaire Facilities and personal property which includes the following:

- All marina docks
- Fuel dock and pump
- Sanitary boat pump out
- Service equipment and tools
- Service vehicles
- Rental boats
- On site residence
- Restaurant equipment and supplies
- Office and retail equipment
- Intangible items including the name "Lewis and Clark Marina, marina website and book of business. All items are listed in Section 4 – Settlement Agreement.

REPAIR AND MAINTENANCE RESERVE

The State believes that all facilities should be preserved and maintained by the concessionaire at a high level on an ongoing basis throughout the term of the concession agreement.

This reserve will be generated from all Marina sales and will provide an annual budget to be utilized towards concessionaire facilities as defined in the Draft Agreement. This is an expenditure requirement of the concessionaire to provide for ongoing and annual repairs on an as needed basis. These funds are not allowed to be used towards new development, every day cleaning, routine maintenance or annual inspections. Rather, it is intended to provide repairs and improvements to existing facilities which maintain their integrity and preserve the investments while serving the public in an attractive setting.

The Draft Agreement stipulates an annual plan to be submitted by the concessionaire for approval by the Department. Ideally, the concessionaire and Park Manager will cooperatively identify and prioritize needed repairs on an ongoing basis and develop this plan annually.

The State proposes the following Repair and Maintenance Reserve minimums:

- Two percent (2%) of all gross receipts less restaurant and fuel sales
- One and a half percent (1.5%) of gross receipts on restaurant and fuel sales

However, analysis conducted by CHM Government Services suggests that a reserve of approximately 4.5% will provide the best stewardship of the assets, particularly the marina docks based on their age and condition as detailed by Smithgroup JJR, Inc.

PROMOTION FEE

South Dakota codified law 41-17-22.1, requires concession agreements within Lewis and Clark Recreation Area to include a Promotion Fee of up to 3%. This required fee is assessed on all concession sales within Lewis and Clark Recreation Area. The Promotion Fee is established at 3% in the Draft Concession Agreement. In accordance with the statute, the revenue collected from the promotion fee is used by the Department to promote the facilities, attractions and activities of Lewis and Clark Recreation Area which includes the concession operations. The fee may be added to the price of goods sold.

An annual cooperative promotion plan is developed between the Park, the Marina, and Lewis and Clark Resort. The goal of this process is to develop a mutually agreeable plan which best promotes all services offered at Lewis and Clark Recreation Area using the most effective and economic methods based on annual fund contributions.

PERSONAL PROPERTY RESERVE

The State is interested in ensuring that the personal property related to visitor services (e.g. boat rentals) is maintained in good quality over the course of the term. The state would like to see a commitment to reinvestment in the personal property fleet as needed over the course of the ten year term. This is not a contractual requirement. However, the State is interested in a commitment to this issue.

DOCK CONDITION ASSESSMENT

In 2013, The Department commissioned Smithgroup JJR, Inc. to conduct a dock system assessment and condition report of the concession owned dock system. A full copy of the final report is available upon request by contacting Sean Blanchette at 605.773.3391.

SITE VISIT

A site visit can be arranged for intended bidders which will include a Park overview, on-site tour and inspection of resort facilities and property. Please contact Sean Blanchette for scheduling a site visit.

Sean Blanchette
Concession and Lease Manager
South Dakota Department of Game, Fish and Parks
Division of Parks and Recreation
523 E Capitol Avenue
Joe Foss Building
Pierre, SD 57501
(605) 773-3391

EFFECTIVE DATE AND TERM OF NEW AGREEMENT

The effective date of the concession agreement is estimated to be March 1, 2015. The effective date of the contract is subject to change prior to contract award if determined necessary by the State.

The agreement is offered for a term of ten years for meeting the minimum terms proposed in this prospectus. The Department will consider additional term length in exchange for an additional capital investment which enhances the services at Lewis and Clark Marina and which require additional time to amortize. Any proposed additional investments and modifications to the lease term are subject to Department review and approval. If approved, additional investments will be included as a requirement in the final concession agreement.

SECTION II

PROPOSAL PACKAGE INSTRUCTIONS

Proposal to Provide Marina, Restaurant, Recreation, and Other Services
At Lewis and Clark Marina

South Dakota Division of Parks and Recreation

PROPOSAL INSTRUCTIONS

1) Submission of Proposal

- a) Proposals must be received by the due date shown on the front page of this Prospectus.
- b) All proposals must be addressed to Douglas Hofer, Director, Division of Parks and Recreation, 523 E Capital Avenue, Joe Foss Building, Pierre, SD 57501 and received by the Department on or before 3:00pm Central Time on December 8, 2014. Any information received in the proposals will be confidential and will not be released by the Division unless requested by the bidder to do so. Unsuccessful proposals or proposals received after the deadline will be returned to the bidder. Late proposals will be returned unopened.
- c) A draft concession agreement has been included in this Prospectus and sets forth the minimum terms and conditions under which the concession operation is to be conducted. Items left blank will be filled in consistent with the bid. Items included in the applicant's offer, if accepted as part of the proposal, will be incorporated into the final version of the lease agreement.
- d) Two copies and an original, plus required electronic forms, must be submitted and signed by the authorized person in the organization.

2) Questions

- a) If you do not understand something in the Prospectus, you must submit your questions in writing to the following person no later than November 24, 2014.

Sean Blanchette
Concessions Manager
South Dakota Department of Game, Fish and Parks
Division of Parks and Recreation
523 E Capital Avenue
Joe Foss Building
Pierre, SD 57501

- b) The Division will respond to questions in writing, and will provide the questions and responses to all potential Offerors who have requested a Prospectus. Questions submitted after this date may not be answered.

3) Forms in Which Proposal Must be Submitted

- a) Offerors must follow the format provided in the Proposal Package, including in its entirety without alteration the "Offeror's Transmittal Letter," in competing for the concession opportunity. Failure to submit the Offeror's Transmittal Letter without alteration (except for filling in the indicated blanks) will make your proposal non-responsive.
- b) Please number each page and section in your completed proposal. Add information to your proposal only to the extent that it is necessary and relevant to respond to the factor. Each page should have a heading identifying the selection factor and subfactor to which the information contained on the page responds. Stay within the organizational framework in the Proposal Package. However, in assessing an offeror's response to a given selection factor, the Division may consider relevant information contained elsewhere in the proposal.

4) Evaluation of Offers

- a) All proposals received by the deadline will be evaluated by the Division of Parks and Recreation based on the following factors:
 - Managerial and operational experience – 25%

- Financial capabilities – 25%
 - Franchise fee, repair and maintenance reserve and other benefits offered - 20%
 - Other factors, including sales and marketing – 20%
 - The proposals attention to adherence to the instructions and requests included in this prospectus – 10%
- b) The Division of Parks and Recreation reserves the right to reject or disregard any proposals submitted or to make counter proposals which it may consider reasonable or desirable, and it reserves the right to negotiate with the bidder making the proposal deemed best to achieve the most desirable Agreement.
- c) The bidder, by submission of this proposal, agrees that if selected by the Department, to complete the negotiation and execution of an agreement by March 1, 2015.

5) Cautions to Offerors about Submission and Evaluation of Proposals

- a) Offerors must follow the format provided in the Proposal Package, including in its entirety without alteration the "Offeror's Transmittal Letter," in competing for the concession opportunity. Failure to submit the Offeror's Transmittal Letter without alteration (except for filling in the indicated blanks) will make your proposal non-responsive.
- b) All information regarding this Prospectus will be issued in writing. No Department or other State of South Dakota official is authorized to make substantive oral representations relating to this matter, and no Offeror should rely on any oral representations made by government officials with respect to this transaction.
- c) The proposal includes the selection factors to be used by the Department to evaluate proposals. Under each factor, the Department identifies subfactors to ensure that all elements of the factor are considered. You, the Offeror, should ensure that you fully address all of the selection factors and related subfactors.
- d) The information provided in this Prospectus, including the Appendices, is provided to allow Offerors to understand the operations and terms of the new concession agreement. Offerors are encouraged to thoroughly review all information and required submittal documents before beginning to prepare a proposal.
- e) If you propose to make any financial commitments and considerations in response to any selection factor, your proposal will be closely reviewed and analyzed against your financial statements and supporting documents with appropriate review of feasibility. Such documents reviewed and analyzed will include but not be limited to the Business Organization and Credit Information, pro forma income statements, audited financial statements and balance sheets required in the proposal.
- f) The proposal and related materials submitted should reflect the entire proposal you are making. The Department will consider your written submission as your full and final proposal in response to the Prospectus, and will make its selection based on the written information you have submitted and other appropriate information. Do not assume that the Department knows anything about you or your proposal. Do not assume that any information about you or your proposal, previous correspondence or previous submissions are in the possession of or will be considered by the Department. This is true even if you are the current concessioner or have operated another concession within the State of South Dakota.
- g) The draft concession agreement and its exhibits, which set forth the terms and conditions under which the concession operation is to be conducted, are attached. The Director may amend this Prospectus and/or draft concession agreement including extending the due date prior to the proposal due date. The Director may also cancel a solicitation at any time before the award of the concession agreement if the Director determines in its discretion that this action is appropriate in the public

interest. No Offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or reissued solicitation for this concession agreement.

- h) Document delivery services, including overnight delivery, to some areas may not provide true overnight delivery. Offerors are encouraged to insure the timely submittal of proposals by contacting the delivery service of their choice regarding delivery availability for the specific location specified on the front page of this Prospectus.
- i) Offerors are responsible for undertaking appropriate due diligence with respect to this business opportunity. All of the statements made in this Prospectus regarding the nature of the business and its likely future are only opinions of the Department. Offerors may not rely on any representations of the Department in this regard.
- j) Offeror understands that, if selected, it is required to purchase existing concessionaire facilities as well as concessionaire's personal property in accordance with ARSD 41:13 (1990 Version) which has been established by an appraisal and is included in the purchase as stated in this Prospectus. Offeror further understands that any new lease issued will be subject to ARSD 41:13 (2005 Version) which provides that only concessionaire facilities shall be valued by an appraisal for sale to a future successor and does not require personal property to be transferred to a future successor concessionaire. Any personal property purchased by the selected concessionaire pursuant to this prospectus may be sold in the future to the successor on its own terms but the successor is not required to purchase said personal property.

SECTION III

PROPOSAL PACKAGE

PROPOSAL TO PROVIDE MARINA, RESTAURANT,
RETAIL, RECREATION AND OTHER SERVICES
AT LEWIS AND CLARK RECREATION AREA

South Dakota Division of Parks and Recreation

EXHIBIT 1: THE OFFER

Douglas Hofer, Director
South Dakota Division of Parks and Recreation
523 East Capitol Avenue
Pierre, SD 57501-3185

Dear Mr. Hofer:

I hereby agree to provide all visitor services, facilities, and improvements at Lewis and Clark Marina in accordance with the terms and conditions specified in the prospectus, draft concession or lease agreement provided in the Prospectus; and to execute the draft concession agreement. I have attached, to support my offer, those items as described in Exhibit 2 (Certificate of Corporate Proponent) and 3 (Proposal) of the Prospectus

By submitting this Proposal I hereby agree, if selected for award of the next concession lease:

1. To commence operations under the next concession lease on the effective date of the lease
2. To the terms, conditions, and values included in the Settlement Agreement
3. To resolve any disputes that may occur in accordance with the Administrative Rules of South Dakota
4. (Include only if the Offeror is not to be the Concessionaire under the draft concession agreement)
To provide the entity that is to be the Concessionaire under the draft concession agreement with the funding, management, and other resources described in the proposal.

If selected by the Game, Fish and Parks Commission, I agree, within 30 days of notification and acceptance of my offer, to enter into negotiations with the South Dakota Department of Game, Fish and Parks for a concession agreement to furnish the accommodations and services as described in the prospectus.

Sincerely,

Signature

Witness

(Seal)

Company of Corporation

Address _____

Phone Number _____

EXHIBIT 2: CERTIFICATE OF CORPORATE PROPONENT

I _____ certify that I am the _____ of the corporation named as proponent herein; that _____, who signed this proposal on behalf of the offer; was then _____ of said corporation; that said proposal was duly signed in behalf of the corporation by authority of its governing body and within the scope of its corporate powers.

Title

EXHIBIT 3: PROPOSAL

PART 1: MANAGERIAL EXPERIENCE

STATE'S OBJECTIVES

The State is interested in appointing a concessionaire who has the relevant management and operational experience to manage the marina concession operation at Lewis and Clark Recreation Area. The State wishes to understand the background of the Offeror in providing the same or similar types of services as those to be provided under the Concession Agreement.

QUESTIONS

Question 1.1 Resume and experience of key executive personnel

Demonstrate that you or your organization's key executive personnel have the experience and skills to effectively carry out the responsibilities of the Draft Concession Agreement.

- a. Describe the qualifications of the Offeror with responsibility for directly supervising this concession agreement. Include relevant experience, minimum qualifications, certifications (if applicable), and education in a consistent format.
- b. Describe the qualifications and other criteria for selection of key personnel of the different operational centers of the marina such as office administration, restaurant management and service department staff.

Question 1.2 Prior experience

The State believes that past experience is an indication of future performance. Please provide example(s) of your experience in the operation and management of marina, retail and other recreational facilities. The State will evaluate, among other factors, the length of experience, and the size and scope of the operation. For each operation discussed, provide the following information:

- a. Provide the name and location of operation
- b. Identify the owner or operator that you managed the project for including contact information (phone and email)
- c. Describe the nature and tenure of the Offeror's involvement
- d. Present information on the size of the operation: for example number of slips, number of seats, retail square feet
- e. Describe the amenities and services offered
- f. Gross revenues for the most recent three years of operation in which the Offeror was involved with the business
- g. Indicate the current status of the business (e.g., owned and operated by Offeror, sold, open but no longer operated by Offeror, closed, etc.)

Question 1.3 Prior experience with external stakeholders

- a) The Park has spent considerable time and effort to develop and foster good working relationships with the surrounding community: i.e., Chambers, tourism organizations, CVB and other associations interested in the well being of the Park. Please describe your experience with relationships with similar organizations and communities in and around locations where you currently have business operations.

Question 1.4 Restaurant operational plan

The State seeks consistency in the restaurant operation. The restaurant operation has experienced several operational changes in the past 10 years. Expanded hours are proposed to provide breakfast on the weekends. Please provide a restaurant operating plan that demonstrates your knowledge and experience in the food service industry:

If you intend to directly manage the restaurant operation, please provide the following:

- a. Provide a brief work history for key restaurant staff including name and location of past employment, tenure of employment and duties
- b. Describe the nature of your restaurant concept
- c. Provide proposed operating hours (required minimums are detailed in the Draft Concession Agreement) and a sample menu
- d. Present information on the amount of staff required to carry out your operation as well as a staff schedule

If you intend to sublease the restaurant operation please indicate your selected operator or planned method for operator solicitation. All subleases are subject to Department approval and must provide at least the listed information above to be considered.

Additional information may be requested.

PART 2: FINANCIAL CAPABILITIES

STATE'S OBJECTIVES

The State wishes to ensure that the future Concessionaire is financially able to meet the requirements of the Concession Agreement, and has a financial history that demonstrates the ability of the Offeror to operate the concession profitability and effectively.

QUESTIONS

Question 2.1 Financial statements

Demonstrate that you are financially sound and have a history of meeting your financial obligations by providing financial statements for the two most recent fiscal years, with all notes to the financial statements. Personal financial statements must be provided for any owners of a sole proprietorship or general partners within a partnership.

Question 2.2 Credit report

Provide a current credit report (within the last six months) from a major credit reporting company such as Equifax, Experian or Dunn & Bradstreet.

Question 2.3 Initial Investment Schedule

Demonstrate your understanding of the financial obligations of the draft Concession Agreement by providing your estimates of the acquisition and start-up costs of this business. Explain fully the methodology and the assumptions used to develop the estimate. The information provided should be of sufficient detail to allow a reviewer to fully understand how the estimates were determined.

Question 2.4 Sources of capital

Demonstrate your ability to obtain the required investment funds detailed above. Identify the source(s) of the funds and provide compelling documentation of your ability to obtain the funds from these sources. Explain fully the financial arrangements you propose, using the following guidelines:

- a. Document each source and availability of all funds with your current audited financial statements, financing agreements, letters of commitment, or similar supporting documents.
- b. If funds are to be obtained from lending institutions (banks, savings and loans, etc.), include a letter (addressed to the lender and containing all appropriate bank contact information) permitting the lender to release any information to the State concerning the financing arrangements of this opportunity. Include the contact name on the letter.
- c. If funds are to be obtained from an individual, or a corporation whose primary fund source is an individual, provide the following as appropriate:
 - Current personal financial statement for the primary source of funds.
 - Documentation of any assets to be sold.

Question 2.5 Prospective financial statements and operating assumptions

Demonstrate that your proposal is financially viable. Using the format outlined under Questions 2.5 of the MS Excel workbook provided identify estimates of prospective revenues and expenses of the concession business in the form of annual prospective income and cash flow statements for the term of the Concession Agreement. Complete all of the forms provided and submit both a hard copy and an electronic Excel spreadsheet file. Please clearly provide the following in support of your estimates:

- a. State and incorporate the annual inflation rate and estimates of real growth you anticipate.
- b. You may expand on the information requested on the form, but do not provide less, do not reduce the captions called for, and do not change the order of items.
- c. Do not add or eliminate columns or rows on the Excel spreadsheets provided in the appendix. If you wish to provide additional information, do so in additional spreadsheets, outside of the ones provided. If additional information is provided, clearly identify how it fits into the income statement, cash flow, and/or assumption tables.
- d. Identify the fiscal year beginning and end dates (month and day) that the offeror proposes to operate within.
- e. Provide a clear and concise narrative explanation of the method(s) used to prepare the estimates and the assumptions on which your projections are based. Information must be sufficiently detailed to allow a reviewer to determine the basis for the estimates and make a determination of whether or not the projections are realistic.
- f. If you intend to assess a Management Fee, or other form of corporate overhead and profit, you must CLEARLY describe what this fee is comprised of (Officer salaries, human resources, accounting, marketing, profit, etc.).
- g. Clearly identify your estimates for real property repair and maintenance reserve.
- h. Provide workforce estimates in Full Time Equivalents (FTE) for each operating department identified.

PART 3: FRANCHISE FEES AND OTHER BENEFITS

STATE'S OBJECTIVES

The State seeks to balance visitor services and resource protection with financial returns which are reinvested back into the facilities at Lewis and Clark Recreation Area; and concessionaire re-investment.

QUESTIONS

Question 3.1 Franchise Fee

1. The minimum franchise fee structure acceptable to the State for this lease operation is:

- Base rent of \$42,000 annually
- AND-
- Seven percent (7%) of all Gross Receipts in excess of \$700,000 less Restaurant sales
- AND-
- Five percent (5%) of restaurant Gross Receipts

The offer of a higher franchise fee than this minimum is generally beneficial to the State and accordingly will generally be more favorably evaluated. However the State will balance consideration of revenue with its objectives of protecting, conserving, and preserving resources of the park area and of providing visitor services to the public at reasonable rates.

State the franchise fee that you propose. Such fee must at least equal the minimum franchise fee set forth above. Express this fee as a combination of base rent and percentage of annual gross receipts.

_____base annual rent; AND

_____percent of Gross Receipts in excess of \$700,000 less restaurant Sales; AND

_____percent of restaurant Gross Receipts

Question 3.2 Promotion Fee

The Draft Concession Agreement requires a Promotion Fee of 3% of all Gross Receipts. This fund is required by state law 41-17-22.1 and is generated from all concession based sales within Lewis and Clark Recreation Area. A cooperative promotion plan is developed between the Park, the Marina and the Resort annually based on actual fund balances. The goal of this plan is to promote all services offered at Lewis and Clark Recreation Area using the most effective and economic methods based on annual fund contributions.

The state realizes the prominent role that outdoor recreation plays in our economy, and the value of attracting additional tourism activity to the area. Additionally, the state believes that Lewis and Clark Recreation Area with its abundance of natural beauty and recreational opportunity, has established itself as a major recreational destination in the state. Promotion is just one part of the successful marketing efforts that a concessionaire will need to undertake in order to maximize the public perception and awareness of this resource.

Please provide a sample marketing plan for Lewis and Clark Marina that will provide for the maximum public use, business growth, and fulfillment of the obligations outlined in the draft concession agreement. This plan should include at a minimum the following items

- a. Background and overview
- b. Identification and segmentation of target market segments
- c. Strategy for marketing to each segment, including trends associated with each segment, an estimation of resources to be allocated to each segment, and comparable mix of business to other similar business operations
- d. Your philosophy on customer service, meeting visitor expectations, and expanding the customer base.

Question 3.3 Repair and Maintenance Reserve

As outlined in the Business Opportunity section, the State believes that well maintained facilities at Lewis and Clark Recreation Area are an integral part of the visitor experience. The Draft Agreement includes a minimum Repair and Maintenance Reserve for Concessionaire Facilities as follows:

- 2% of Gross Receipts less restaurant sales and fuel sales
- 1.5% of restaurant and fuel sales receipts.

This monetary obligation is in addition to routine or preventative maintenance necessary for continued use and appearance. It is intended to be put towards renovations, or repairs which help preserve the integrity of the facilities or towards replacements of major components once they have reached the end of their useful life.

The Draft Agreement stipulates an annual plan to be submitted for approval by the Department. Ideally, the concessionaire and Park Manager will cooperatively identify and prioritize needed repairs on an ongoing basis and develop this plan annually.

Given the State's objectives and the requirements discussed in the Business Opportunity section and clarified in Section 15 of the Draft Agreement, please elaborate on your plan for facility repair and maintenance. Your plan should include the following:

1. Preliminary observations of items to be renovated (i.e. docks, marina utilities, fuel sales system access, etc.), your expected schedule, and prioritization plan
2. Brief description of the plan, including any strategy to make immediate improvements in the first year of operation

3. Estimated costs (if available)

Although a minimum reserve is established in the Draft Agreement, the State is of the opinion that a repair and maintenance reserve of approximately 4.5% would provide for the best stewardship of the assets, particularly, the marina docks. Proposals offering a reserve higher than the proposed minimum and closer to our estimate will be more favorably evaluated.

State the repair and maintenance reserve that you propose. Such fee must at least equal the minimum set forth above. Express this reserve as a percentage of annual gross receipts.

_____percent of Gross Receipts less restaurant sales and fuel sales; AND

_____percent of restaurant and fuels sales receipts

Question 3.4 Personal Property Reserve

The State is interested in ensuring that the personal property related to visitor services (e.g. boat rentals) is maintained in good quality over the course of the term. The state would like to see a commitment to reinvestment in the personal property fleet as needed over the course of the ten year term. The state is of the opinion that a minimum of .75 percent of gross revenue should be established for the replacement of the rental boat fleet. This is not a contractual requirement. However, the State is interested in your commitment to this issue.

1. Identify how you will be responsive to this issue (e.g. commitment to a personal property reserve and/or a replacement schedule by usage or years in service.)

PART 4: CUSTOMER SERVICE PHILOSOPHY

STATE'S OBJECTIVES

The State believes that perceptions of its concession operations reflect on the Park as a whole and that customer service is a critical if not the most important component a positive and memorable experience at Lewis and Clark Marina and Lewis and Clark Recreation Area.

Question 4.1 Customer Service

The State believes that good customer service is critical to success of all services offered at Lewis and Clark Recreation Area including the Marina. The following items have been identified as the most prevalent customer service needs at Lewis and Clark Marina based on a 2012 Marina slip holder customer service survey conducted by the Department. Please provide the below requested information intended to accommodate the following customer needs:

1. Professionalism: Slip holders expect ample, easily identifiable and courteous staff which provide friendly and timely service and respond to customer issues and complaints appropriately. Please provide a customer service and employee uniform policy you would implement at the Marina.
2. Communications: Slip holders expect reasonable office hours, available points of contact, a variety of methods of communication with the Marina as well as timely and courteous responses to inquiries. Please provide guidelines or marina staff policy for boater/Marina communications which would be implemented and shared with the slip holders.
3. Third party boat service and repair providers: The Draft Concession Agreement provides the concessionaire with the latitude to allow third party providers to service boats docked in the Marina. It is anticipated that the Marina service department may not be able to meet all customers' service needs at all times. Under this scenario, customers expect a reasonable ability to seek their own boat service provider for onsite repairs in the event the Marina is not able to conduct the repair or cannot meet their desired service timeline. Please provide a third party service vendor policy you would implement at the Marina.
4. Storage Yard: A fenced and secure boat storage area is provided at the Marina. Although locked in the off season, customers desire an opportunity to access their boats for winterization, spring preparation and other offseason repairs. Please provide rules, guidelines or policies you would implement at the Marina to accommodate and control off season storage yard access to boat owners.

PART 5: OTHER CRITERIA

QUESTIONS

Question 4.1 Other Facilities and Services Offered

In addition to the Minimum Required Services, the Draft Concession Agreement also provides for additional authorized services. These are intended to allow flexibility in additional services offered. Some slip holder have voiced their desire to see some of these services such as boat towing implemented at the Marina. Please indicate if you intend to provide any of these services and describe any additional facilities and services beyond those authorized that you propose which will expand, enhance and improve the visitor experience at Lewis and Clark Marina.

CASH FLOW STATEMENT FORM (Question 2.5)

Grey Cells Are Input Cells

Company Name

Prospective Cash Flow Statement

Operating Activities	Year Zero	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Net Income											
Depreciation											
Amortization											
Change in working capital											
Other (describe)											

Net Cash Provided by Operating Activities

Dividend
 Sale/Repurchase of Stock
 Borrowings/ Repayment of Debt
 Other (describe)

Net Cash Used in Financing Activities

Investment Activities

Possessory Interest
 Personal Property
 Real Property (not Within Park)
 Inventory and Supplies
 Start-Up Expenses
 Working Capital
 Other (describe)

Net cash used in Investing activities

Total Cash Flow

- Notes**
- 1) Formulas included in this form are provided by the South Dakota Department of Game, Fish and Parks as guidance only. The Offeror is responsible for its financial projections and their accuracy.
 - 2) Yellow cells represent categories that need to be explained on the "Cash Flow Statement Assumptions" worksheet.
 - 3) Investment activities should include entries for one time acquisition and disposal at the beginning and end of the Draft Contract term as well as cyclical or annual capital investments such as replacement.
 - 4) Estimates for capital expenditures in the Cash Flow Statements made prior to or during the first year after the start of the Draft Contract should be reflective of estimates provide in the Initial Investment and Start-up Costs form.
 - 5) Clearly delineate between personal and real property and define your rationale and assumptions for each category.
 - 6) Since Repair and Maintenance Reserve (component renewal) activities are considered capital expenditures they should be included on the cash flow statement.

CASH FLOW STATEMENT ASSUMPTIONS (Question 2.5)

Grey Cells Are Input Cells

Company Name

Prospective Cash Flow Statement

Investment Activities

Possessory Interest

Describe - PI occurring during the Draft Contract

Other (describe)

Describe

Notes

In the description sections of this form, please provide an explanation of sufficient detail to allow a reviewer to fully understand how the estimates were determined.

RECAPTURE OF INVESTMENT FORM (Question 2.5)

Grey Cells Are Input Cells

Company Name

Assets and Other

Posessory Interest Value	\$
Real Property (not within the Park)	\$
Personal Property	\$
Inventory and Supplies	\$
Working Capital	\$
Other (describe)	\$
Other (describe)	\$
Other (describe)	\$

Total of Recaptue of Investments at the End of the Contract Term

Total \$ 0

Notes

- 1) The value of ending PI is only a best guess estimate neither offeror nor the SDDGFP is bound by the number presented above.
- 2) Reference the Draft Contract and exhibits for guidance on Possessory Interest
- 3) Formulas included in this form are provided by the NPS as guidance only. The Offeror is responsible for its financial projections and their accuracy.
- 4) Yellow cells represent categories that need to be explained on the "Recapture of Investment Assumptions" worksheet.
- 5) All Offerors must include their estimate of the ending value of all property and other assets at the end of the Draft Contract.
- 6) Expenditures entered into this form should not be included in the proforma income statement.
- 7) Expenditures entered into this form should be included in the cash flow proforma as capital expenditures in the final year of the Draft Contract.

RECAPTURE OF INVESTMENT ASSUMPTIONS (Question 2.5)

Grey Cells Are Input Cells

Company Name

Assets and Other

Please describe the method used to determine the values of the planned recoup of investments at the end of the Draft Contract.

Possessory Interest Value Describe

Real Property (not within the Park) Describe

Personal Property Describe

Inventory and Supplies Describe

Working Capital Describe

Other (describe) Describe

Other (describe) Describe

Other (describe) Describe

Notes

In the description sections of this form, please provide an explanation of sufficient detail to allow a reviewer to fully understand how the estimates were determined.

FIRST AMENDED SETTLEMENT AGREEMENT
LEWIS AND CLARK MARINA

This Amended Settlement Agreement is made and entered into this 21 day of October, 2014, by and between the State of South Dakota, Department of Game, Fish and Parks (hereinafter "Department"), of 523 East Capitol, Pierre, SD 57501, and Lewis and Clark Marina, LLC. (hereinafter "Concessionaire") of 43527 Shore Drive, Yankton, SD 57078.

WHEREAS, Concessionaire is the concessionaire under an existing concession lease agreement, as amended, with Department, for the operation of facilities and concessions at Lewis and Clark State Recreation Area, which said concession lease will expire on December 31, 2014; and

WHEREAS, the Department and Concessionaire previously entered into a Settlement Agreement on January 30, 2014 attached hereto as Exhibit A; and

WHEREAS in accordance with ARSD 41:13, the Parks and Recreation Division of the Department previously issued a prospectus pursuant to the Settlement Agreement attached as Exhibit A, however the submissions in response to that prospectus failed to identify a new concessionaire for the Lewis and Clark Recreation Area (hereinafter "New Concession Lease"); and

WHEREAS the Concessionaire was willing to reduce the purchase price conditioned upon the Department reducing franchise fees and reserve requirements; and

WHEREAS, the parties desire to enter into this First Amended Settlement Agreement, revising some terms from the original Settlement Agreement in order to resolve issues that may arise in connection with the Prospectus, solicitation of bids and awarding of the New Concession Lease and to anticipate the possibility of transfer of the operations and assets at Lewis and Clark Recreation Area to a new concessionaire; and

WHEREAS, On October 2, 2015, the South Dakota Game Fish and Parks Commission authorized revisions to the Original Settlement Agreement attached hereto as Exhibit A;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter made by and between the parties hereto, the parties agree as follows:

1. The Commission will issue a revised Prospectus (hereinafter "Prospectus") in connection with soliciting bids for the new Lewis and Clark concession lease which will provide for the following:

- a. That a new concessionaire shall be required to purchase Concessionaire's interest in concessionaire facilities and personal property used in providing concession services at a total price of \$2,900,000; as more fully explained and itemized on the "Summary Appraisal Report of the Leasehold Interest Held By Lewis and Clark Marina" dated February 3, 2014, attached hereto as Exhibit "B" and incorporated herein by this reference.
 - b. That a new concessionaire shall be required to purchase Concessionaire's interest in intangibles used in providing concession services at a total price of \$37,000 as more fully explained and itemized on the "Intangible Listing" attached hereto and Exhibit "C" and incorporated herein by this reference;
 - c. That the restaurant franchise fee advertised in the new prospectus shall be set at 5% of gross receipts;
 - d. That the repair and maintenance fund requirements advertised in the new prospectus shall be set at 2% of gross receipts except for the restaurant and fuel gross receipts, for which the fund requirement shall be set at 1.5%;
 - e. That submissions to the revised Prospectus will be due on or before December 8, 2014;
 - f. Closing is anticipated to take place on or before March 1, 2015. The closing site shall be a neutral site such as a title insurance company or bank. Any escrow closing costs shall be the expense of the new concessionaire. Concessionaire shall cooperate with all reasonable closing requirements which are necessary to close the transaction in a business-like manner. Concessionaire will upon full payment for all such property on the appraisal, provide a Bill of Sale to the new concessionaire at closing; and
 - g. All payments to Concessionaire by the new concessionaire required under this Agreement and under the Prospectus shall be made in full at the time of closing.
2. Should the Concessionaire sell his interest as a result of the Prospectus issued pursuant to paragraph 1 or should a new concessionaire enter into a Commission approved concession lease for the Lewis and Clark Marina with the Department on or before December 31, 2015 and take possession of the Lewis and Clark Marina facilities on or before December 31, 2015, the Department will reimburse the Concessionaire for improvements made to

Government Facilities in the total amount of \$63,000. This amount is due and owing on or before January 31, 2016, only upon the following conditions:

- a. A new concessionaire is approved by the Commission and the new concessionaire enters into a Commission approved concession lease for the Lewis and Clark Marina with the Department on or before December 31, 2015;
 - b. The Concessionaire does not commit a material breach of the lease agreement dated January 19, 2005 including any amendments and a satisfactory inspection of the Lewis and Clark Marina Concession Area and related facilities including Concessionaire Facilities and Government Facilities; and
 - c. The Concessionaire does not commit a breach of this Amended Settlement Agreement.
3. The parties agree that in the final period of operation of the current concession agreement, it may be necessary for the Concessionaire to purchase items of personal property for the continued operation of Lewis and Clark Marina. It is expected that from time to time personal property items, including but not necessarily limited to such items as dock items, refrigerators, small kitchen appliances, etc., will become inoperable and not repairable, and will need to be replaced. The agreed to inventory of property and the associated values will be adjusted as the purchases / replacements occur, and changes to the inventory will be communicated within a reasonable time of purchase with proof of purchase to the Department. The value of the inoperable item(s) will be deducted from the inventory and the value at cost of the replacement item(s) will be added. It is expected and agreed that items purchased will be similar in style, function and cost as the item(s) being replaced. Concessionaire agrees that while these purchases may be reasonably necessary and required, it is not interested in larger purchases during this final period of operation and will not be required to purchase any such larger items for replacement in Concessionaire's discretion. It is agreed that before Concessionaire purchases any item(s) with an aggregate purchase price of \$2,000.00 or more, it must receive the prior written approval of the Department which may not be unreasonably withheld; and provided further, that the requirement for prior written approval shall be waived in emergency situations where the Department is not available. In an emergency situation, Concessionaire shall be allowed to immediately order replacement items priced in excess of \$2,000.00, provided that the Concessionaire shall notify the Department, pursuant to paragraph 19, as soon as reasonably possible following such purchases.
4. The parties agree that in the event it becomes necessary for a transition of management and operations from Concessionaire to a new, as yet to be

identified or selected concessionaire at the termination of the current concession agreement, it shall be necessary and required for purposes of purchase by a new concessionaire to conduct an inventory of perishable items maintained in stock and in the possession of Concessionaire at the termination of the concession agreement. These items will include but not necessarily be limited to marketable merchandise and sundries from the retail store, kitchen and food stuffs and goods, cleaning supplies, maintenance and repair parts and supplies, etc. Values and compensation for inventoried items not covered under the appraisal shall be inventoried and valued as agreed upon by Concessionaire and the new Concessionaire. In the event that Concessionaire and the new concessionaire cannot reach an agreement, the values of compensation for inventoried items not covered by the appraisal shall be based on actual invoice costs to Concessionaire. In the event Concessionaire is unable to produce invoices for the same, the items may be valued by an appraiser at the equally shared expense of the Concessionaire and new concessionaire. The new concessionaire shall be required to pay Concessionaire for such inventoried items excluded from the appraisal at closing.

5. The parties acknowledge that additional personal property may be identified subsequent to the execution of this Agreement which was not included in the appraisal conducted by Shaykett Appraisal Company, Inc. of Sioux Falls, South Dakota. The parties agree that Concessionaire in its sole discretion may either maintain possession of this property or arrange on its own to sell it to a new concessionaire or other third parties.
6. Concessionaire agrees to cooperate with the Department in scheduling and providing staff to assist with an initial site visit by prospectus bidders. Concessionaire agrees to waive any claim for compensation for the time of its principals or staff in participating in the initial site visit of the premises. Additional site visits shall be permitted, provided, however, that such site visits shall be supervised by the Department, and need not involve Concessionaire, its principals or staff, and arrangements for such additional site visits shall be made by mutual agreement with Concessionaire at least twenty-four (24) hours in advance to keep to a minimum any disruption to Concessionaire or resort guests. Concessionaire agrees that it will not independently respond to inquiries received from potential prospectus bidders. In the event it receives such inquiries, Concessionaire agrees to advise any potential prospectus bidders that any inquiries must be made in writing directed to the Department. If the Department is unable to provide a satisfactory response to such inquiries, it will forward such inquiries to Russell Marsh, who shall within seven (7) days of his receipt thereof provide the Department with Concessionaire's reasonable written response to such inquiries. Upon its receipt of Concessionaire's responses, the Department will forward responses to inquiries to all Prospectus bidders. In addition, Concessionaire agrees to waive any claim for compensation for the time of its

principals or staff spent in participating in a tour of the premises and reasonable review of the property with a prospective or new concessionaire.

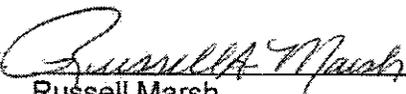
7. Concessionaire, its officers, and authorized representatives, agrees to take no actions or make representations of any kind which are designed or intended to discourage or influence interested parties from bidding for the new Lewis and Clark Marina Concession Lease or to influence the amount of the bid by a prospective concessionaire. Concessionaire will not misrepresent any matters concerning the marina facilities or concessions to a prospective concessionaire.
8. Following selection of the new concessionaire and no later than March 1, 2015, Concessionaire shall provide the new concessionaire with a dock reservation summary and boat storage fees as of the last day of the month prior to the selection of the new concessionaire and thereafter update it on a monthly basis. The dock reservation summary and boat storage summary shall include, for each dock or boat stored, a summary of the renter and the amounts of advanced deposits received. At closing, Concessionaire shall provide the new concessionaire with a complete accounting of receipts for dock reservations, advance deposits and boat storage fees. All dock rental fees and all boat storage fees collected by Concessionaire in advance for any effective period after the expiration of the current Concession Agreement shall be paid over to the new concessionaire at the time of closing with the new concessionaire. The Concessionaire shall pay over to the new concessionaire the pro-rata share of boat storage fees.
9. Financial information, except for tax returns, required under the current Concession Agreement may be included in the prospectus or made available to prospective bidders in regards to developing their proposals for the operation of the marina. The Concessionaire will cooperate with the Department in providing additional financial information and documents, including tax returns, to potential bidders. The disclosure of proprietary information and tax returns of the Concessionaire may be conditioned upon a confidentiality provision.
10. Should the Commission not select a new concessionaire or should a new concessionaire selected by the commission not enter into a Commission approved concession lease for the Lewis and Clark Marina with the Department on or before March 1, 2015, the Concessionaire will operate the marina as defined in Exhibit A-1 and A-2 in the concession lease agreement for the year 2015 subject to the following:
 - a. That the Concessionaire complies with the current Concession Agreement and amendments during 2014 and 2015 and commits no material breach of that agreement;

- b. That all terms and conditions of the current Concession Agreement shall remain in full force and effect, except as may be modified herein. All notice of default, materiality conditions, and cure periods set forth in the Concession Agreement are hereby restated and incorporated herein by this reference; and
 - c. During 2015, the Concessionaire agrees to operate the Marina as required under the existing lease and any amendments;
11. Should the Concessionaire not operate the marina in 2015 either by choice or due to failure to operate the marina pursuant to the requirements set forth in Section 11 above, the Concessionaire, hereby consents to the Department obtaining a temporary operator. In such event, the Concessionaire is entitled to compensation as provided in Section 13(c)(2) of the Concession Agreement.
 12. Should a subsequent Concessionaire not be selected pursuant to the Prospectus, the Concessionaire shall be required to remove all concessionaire facilities, not including leasehold improvements, and personal property and restore all Government Facilities to a condition satisfactory to the Department on or before December 31, 2015.
 13. This Agreement reflects the complete and final expression of the parties' agreement, superseding all prior negotiations or agreements, whether written or oral. This agreement may not be modified or amended except as authorized by the Commission, in writing and executed by all parties. Nothing in this agreement serves to restrict the Department or the Commission from issuing any future prospectus with different terms and conditions.
 14. Any reference in this agreement to a party shall be construed to include that party and its officers and directors, shareholders, members, successors, assigns, heirs, devisees, administrators, parents and subsidiaries, affiliates, employees, and agents. This Agreement is binding upon and inures to the benefit of each party to this agreement, and to all officers, directors, shareholders, members, successors, assignees, devisees, administrators, parents and subsidiaries, affiliates, employees, and agents.
 15. This Agreement may be executed in identical counterparts. Each counterpart shall be deemed an original of this Agreement.
 16. The parties agree to execute, file and deliver such additional documents and instruments, and to perform such additional acts as are necessary, appropriate, or reasonably requested to effectuate, consummate, or perform and of the terms, provisions or conditions of this agreement.

17. The parties each warrant and represent that they have read this Agreement and have been fully informed and have full knowledge of the terms, conditions, and effects of this Agreement, and they have either personally or through their attorneys, fully investigated their full satisfaction the fact surrounding the various issues and matters sought to be addressed and resolved herein, and understand and are satisfied with the terms and effects of this Agreement, which are contractually binding. The parties agree that no promise or inducement had been offered or made except as herein set forth, and that this Agreement is executed of their own free act and deed without reliance on any statement or representation except as herein set forth.
18. Any interpretation or construction of the terms and conditions set forth in this agreement shall be governed by the laws of the State of South Dakota.
19. Concessionaire hereby designates Russell Marsh as its authorized representative for all purposes under this Agreement including but not limited to the authority to execute same on behalf of Concessionaire. The Department hereby authorizes Douglas Hofer as its authorized representative for all purposes under this Agreement including but not limited to the authority to execute same on behalf of the Department. The parties warrant that they have taken or will take within a reasonable period of time, all action necessary in order to authorize and/or ratify the making and execution of this Agreement and will verify the same with authenticated copies of corporate and commission resolutions appropriate for the same.
20. Both parties agree that a copy of his executed Agreement will be made a part of the Prospectus.

Dated this 13th day of October, 2014.

LEWIS AND CLARK MARINA, LLC

By: 
Russell Marsh
Lewis and Clark Marina, LLC.

THE STATE OF SOUTH DAKOTA,
DEPARTMENT OF GAME, FISH AND
PARKS

By: _____
Douglas Hofer, Director, Division of Parks
and Recreation

17. The parties each warrant and represent that they have read this Agreement and have been fully informed and have full knowledge of the terms, conditions, and effects of this Agreement, and they have either personally or through their attorneys, fully investigated their full satisfaction the fact surrounding the various issues and matters sought to be addressed and resolved herein, and understand and are satisfied with the terms and effects of this Agreement, which are contractually binding. The parties agree that no promise or inducement had been offered or made except as herein set forth, and that this Agreement is executed of their own free act and deed without reliance on any statement or representation except as herein set forth.
18. Any interpretation or construction of the terms and conditions set forth in this agreement shall be governed by the laws of the State of South Dakota.
19. Concessionaire hereby designates Russell Marsh as its authorized representative for all purposes under this Agreement including but not limited to the authority to execute same on behalf of Concessionaire. The Department hereby authorizes Douglas Hofer as its authorized representative for all purposes under this Agreement including but not limited to the authority to execute same on behalf of the Department. The parties warrant that they have taken or will take within a reasonable period of time, all action necessary in order to authorize and/or ratify the making and execution of this Agreement and will verify the same with authenticated copies of corporate and commission resolutions appropriate for the same.
20. Both parties agree that a copy of his executed Agreement will be made a part of the Prospectus.

Dated this 21st day of October, 2014.

LEWIS AND CLARK MARINA, LLC

By: _____
Russell Marsh
Lewis and Clark Marina, LLC.

THE STATE OF SOUTH DAKOTA,
DEPARTMENT OF GAME, FISH AND
PARKS

By: Douglas Hofer
Douglas Hofer, Director, Division of Parks
and Recreation

SETTLEMENT AGREEMENT
LEWIS AND CLARK MARINA

This Settlement Agreement is made and entered into this 30th day of January, 2014, by and between the State of South Dakota, Department of Game, Fish and Parks (hereinafter "Department"), of 523 East Capitol, Pierre, SD 57501, and Lewis and Clark Marina, LLC. (hereinafter "Concessionaire") of 43527 Shore Drive, Yankton, SD 57078.

WHEREAS, Concessionaire is the concessionaire under an existing concession lease agreement, as amended, with Department, for the operation of facilities and concessions at Lewis and Clark State Recreation Area, which said concession lease will expire on December 31, 2014; and

WHEREAS, in accordance with ARSD 41:13, the Parks and Recreation Division of the Department is presently in the process of developing a Prospectus for the issuance of a new concession lease at Lewis and Clark Recreation Area (hereinafter "New Concession Lease"); and

WHEREAS, the parties desire to enter into an agreement in advance to resolve issues that may arise in connection with the Prospectus, solicitation of bids and awarding of the New Concession Lease and to anticipate the possibility of transfer of the operations and assets at Lewis and Clark Recreation Area to a new concessionaire;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter made by and between the parties hereto, the parties agree as follows:

1. The entirety of this agreement including all terms and conditions of this agreement is subject to approval by the South Dakota Game Fish and Parks Commission (hereinafter "Commission"). Should the Commission not approve this agreement, this agreement is null and void without further action by either party to this agreement.
2. Subject to approval by the Commission, the Commission will issue a Prospectus in connection with soliciting bids for the new Lewis and Clark concession lease which will provide for the following:
 - a. That a new concessionaire shall be required to purchase Concessionaire's interest in concessionaire facilities and personal property used in providing concession services at a total price of \$3,000,000 as more fully explained and itemized on the "Summary Appraisal Report of the Leasehold Interest Held By Lewis and Clark Marina" dated Feb 3, 2014, attached hereto and Exhibit "A" and incorporated herein by this reference.

- b. That a new concessionaire shall be required to purchase Concessionaire's interest in intangibles used in providing concession services at a total price of \$37,000 as more fully explained and itemized on the "Intangible Listing" attached hereto and Exhibit "B" and incorporated herein by this reference.
 - c. Closing is anticipated to take place on or before January 9, 2015. The closing site shall be a neutral site such as a title insurance company or bank. Any escrow closing costs shall be the expense of the new concessionaire. Concessionaire shall cooperate with all reasonable closing requirements which are necessary to close the transaction in a business-like manner. Concessionaire will upon full payment for all such property on the appraisal, provide a Bill of Sale to the new concessionaire at closing.
 - d. All payments to Concessionaire by the new concessionaire required under this Agreement and under the Prospectus shall be made in full at the time of closing.
3. Should the Concessionaire sell his interest as a result of the prospectus issued pursuant to paragraph 2, the Department will reimburse the Concessionaire for improvements made to Government Facilities in the total amount of \$63,000. This amount is due and owing on or before January 31, 2015, only upon the following conditions:
- a. A new concessionaire is approved by the Commission and the new concessionaire enters into a Commission approved concession lease for the Lewis and Clark Marina with the Department on or before January 9, 2015;
 - b. The new concessionaire purchases the concessionaire's interest pursuant to the prospectus issued pursuant to paragraph 2 and closes on that purchase on or before January 9, 2015;
 - c. The Concessionaire transfers all items as contained in the prospectus and Exhibit "B" to the new concessionaire on or before January 9, 2015; and
 - d. The Concessionaire does not commit a material breach of the lease agreement dated January 19, 2005 including any amendments and a satisfactory inspection of the Lewis and Clark Marina Concession Area and related facilities including Concessionaire Facilities and Government Facilities.
 - e. In the event the Concessionaire operates the marina for an additional season pursuant to Section 11 below, the reimbursement amount set forth herein shall be reduced to \$51,000 and payable in a like manner no later than January 31, 2016 conditioned upon the Concessionaire not committing a material breach of the lease agreement dated January 19, 2005 including any amendments, a satisfactory inspection

of the Lewis and Clark Marina Concession Area and related facilities including Concessionaire Facilities and Government Facilities and the Concessionaire compliance with all terms contained in Section 11 below.

4. The parties agree that in the final period of operation of the current concession agreement, it may be necessary for the Concessionaire to purchase items of personal property for the continued operation of Lewis and Clark Marina. It is expected that from time to time personal property items, including but not necessarily limited to such items as dock items, refrigerators, small kitchen appliances, etc., will become inoperable and not repairable, and will need to be replaced. The agreed to inventory of property and the associated values will be adjusted as the purchases / replacements occur, and changes to the inventory will be communicated within a reasonable time of purchase with proof of purchase to the Department. The value of the inoperable item(s) will be deducted from the inventory and the value at cost of the replacement item(s) will be added. It is expected and agreed that items purchased will be similar in style, function and cost as the item(s) being replaced. Concessionaire agrees that while these purchases may be reasonably necessary and required, it is not interested in larger purchases during this final period of operation and will not be required to purchase any such larger items for replacement in Concessionaire's discretion. It is agreed that before Concessionaire purchases any item(s) with an aggregate purchase price of \$2,000.00 or more, it must receive the prior written approval of the Department which may not be unreasonably withheld; and provided further, that the requirement for prior written approval shall be waived in emergency situations where the Department is not available. In an emergency situation, Concessionaire shall be allowed to immediately order replacement items priced in excess of \$2,000.00, provided that the Concessionaire shall notify the Department (see Paragraph #20) as soon as reasonably possible following such purchases.
5. The parties agree that in the event it becomes necessary for a transition of management and operations from Concessionaire to a new, as yet to be identified or selected concessionaire at the termination of the current concession agreement, it shall be necessary and required for purposes of purchase by a new concessionaire to conduct an inventory of perishable items maintained in stock and in the possession of Concessionaire at the termination of the concession agreement. These items will include but not necessarily be limited to marketable merchandise and sundries from the retail store, kitchen and food stuffs and goods, cleaning supplies, maintenance and repair parts and supplies, etc. Values and compensation for inventoried items not covered under the appraisal shall be inventoried and valued as agreed upon by Concessionaire and the new Concessionaire. In the event that

Concessionaire and the new concessionaire cannot reach an agreement, the values of compensation for inventoried items not covered by the appraisal shall be based on actual invoice costs to Concessionaire. In the event Concessionaire is unable to produce invoices for the same, the items may be valued by an appraiser at the equally shared expense of the Concessionaire and new concessionaire. The new concessionaire shall be required to pay Concessionaire for such inventoried items excluded from the appraisal at closing.

6. The parties acknowledge that additional personal property may be identified subsequent to the execution of this Agreement which was not included in the appraisal conducted by Shaykett Appraisal Company, Inc. of Sioux Falls, South Dakota. The parties agree that Concessionaire in its sole discretion may either maintain possession of this property or arrange on its own to sell it to a new concessionaire or other third parties.
7. Concessionaire agrees to cooperate with the Department in scheduling and providing staff to assist with an initial site visit by prospectus bidders. Concessionaire agrees to waive any claim for compensation for the time of its principals or staff in participating in the initial site visit of the premises. Additional site visits shall be permitted, provided, however, that such site visits shall be supervised by the Department, and need not involve Concessionaire, its principals or staff, and arrangements for such additional site visits shall be made by mutual agreement with Concessionaire at least twenty-four (24) hours in advance to keep to a minimum any disruption to Concessionaire or resort guests. Concessionaire agrees that it will not independently respond to inquiries received from potential prospectus bidders. In the event it receives such inquiries, Concessionaire agrees to advise any potential prospectus bidders that any inquiries must be made in writing directed to the Department. If the Department is unable to provide a satisfactory response to such inquiries, it will forward such inquiries to Russell Marsh, who shall within seven (7) days of his receipt thereof provide the Department with Concessionaire's reasonable written response to such inquiries. Upon its receipt of Concessionaire's responses, the Department will forward responses to inquiries to all Prospectus bidders. In addition, Concessionaire agrees to waive any claim for compensation for the time of its principals or staff spent in participating in a tour of the premises and reasonable review of the property with a prospective or new concessionaire.
8. Concessionaire, its officers, and authorized representatives, agrees to take no actions or make representations of any kind which are designed or intended to discourage or influence interested parties from bidding for the new Lewis and Clark Marina Concession Lease or to influence the amount of the bid by a prospective concessionaire. Concessionaire will not misrepresent any matters concerning the resort facilities or concessions to a prospective concessionaire.

9. Following selection of the new concessionaire and no later than December 31, 2014, Concessionaire shall provide the new concessionaire with a dock reservation summary and boat storage fees as of the last day of the month prior to the selection of the new concessionaire and thereafter update it on a monthly basis. The dock reservation summary and boat storage summary shall include, for each dock or boat stored, a summary of the renter and the amounts of advanced deposits received. At closing, Concessionaire shall provide the new concessionaire with a complete accounting of receipts for dock reservations, advance deposits and boat storage fees. All dock rental fees and all boat storage fees collected by Concessionaire in advance for any effective period after the expiration of the current Concession Agreement shall be paid over to the new concessionaire at the time of closing with the new concessionaire. The Concessionaire shall pay over to the new concessionaire the pro-rata share of boat storage fees.
10. Financial information, except for tax returns, required under the current Concession Agreement may be included in the prospectus or made available to prospective bidders in regards to developing their proposals for the operation of the marina.. The Concessionaire will cooperate with the Department in providing additional financial information and documents, including tax returns, to potential bidders. The disclosure of proprietary information and tax returns of the Concessionaire may be conditioned upon a confidentiality provision.
11. Should the Commission not select a new concessionaire or should a new concessionaire selected by the commission not enter into a Commission approved concession lease for the Lewis and Clark Marina with the Department on or before December 31, 2014;, the Concessionaire may operate the marina as defined in Exhibit A-1 and A-2 in the concession lease agreement for no more than one additional year subject to the following:
 - a. That the Concessionaire complies with the current Concession Agreement and amendments during 2014 and commits no material breach of that agreement.
 - b. That all terms and conditions of the current Concession Agreement shall remain in full force and effect, except as may be modified herein. All notice of default, materiality conditions, and cure periods set forth in the Concession Agreement are hereby restated and incorporated herein by this reference;
 - c. During the additional operating season contemplated in this Section, the Concessionaire agrees to operate the Marina as required under the existing lease and any amendments and additionally as follows:
 - i. The service department will open from 8 a.m. to 5 p.m. each day of the week; and

- ii. The marina restaurant will be open at 7 a.m. on weekends for breakfast.
- iii.

12. Should the Concessionaire not operate the marina in 2015 either by choice or due to failure to operate the marina pursuant to the requirements set forth in Section 11 above, the Concessionaire, hereby consents to the Department obtaining a temporary operator. In such event, the Concessionaire is entitled to compensation as provided in Section 13(c)(2) of the Concession Agreement.
13. In any event, Concessionaire shall be required to remove all concessionaire facilities, not including leasehold improvements, and personal property and restore all Government Facilities to a condition satisfactory to the Department on or before December 31, 2015.
14. This Agreement reflects the complete and final expression of the parties' agreement, superseding all prior negotiations or agreements, whether written or oral. This agreement may not be modified or amended except as authorized by the Commission, in writing and executed by all parties.
15. Any reference in this agreement to a party shall be construed to include that party and its officers and directors, shareholders, members, successors, assigns, heirs, devisees, administrators, parents and subsidiaries, affiliates, employees, and agents. This Agreement is binding upon and inures to the benefit of each party to this agreement, and to all officers, directors, shareholders, members, successors, assignees, devisees, administrators, parents and subsidiaries, affiliates, employees, and agents.
16. This Agreement may be executed in identical counterparts. Each counterpart shall be deemed and original of this Agreement.
17. The parties agree to execute, file and deliver such additional documents and instruments, and to perform such additional acts as are necessary, appropriate, or reasonably requested to effectuate, consummate, or perform and of the terms, provisions or conditions of this agreement.
18. The parties each warrant and represent that they have read this Agreement and have been fully informed and have full knowledge of the terms, conditions, and effects of this Agreement, and they have either personally or through their attorneys, fully investigated their full satisfaction the fact surrounding the various issues and matters sought to be addressed and resolved herein, and understand and are satisfied with the terms and effects of this Agreement, which are contractually binding. The parties agree that no promise or inducement had been offered or made except as herein set forth,

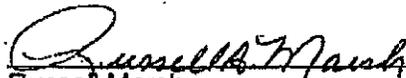
and that this Agreement is executed of their own free act and deed without reliance on any statement or representation except as herein set forth.

19. Any interpretation or construction of the terms and conditions set forth in this agreement shall be governed by the laws of the State of South Dakota.
20. Concessionaire hereby designates Russell Marsh as its authorized representative for all purposes under this Agreement including but not limited to the authority to execute same on behalf of Concessionaire. The Department hereby authorizes Douglas Hofer as its authorized representative for all purposes under this Agreement including but not limited to the authority to execute same on behalf of the Department. The parties warrant that they have taken or will take within a reasonable period of time, all action necessary in order to authorize and/or ratify the making and execution of this Agreement and will verify the same with authenticated copies of corporate and commission resolutions appropriate for the same.
21. Both parties agree that a copy of his executed Agreement will be made a part of the Prospectus.

Dated this 30th day of Jan., 2014.

LEWIS AND CLARK MARINA, LLC

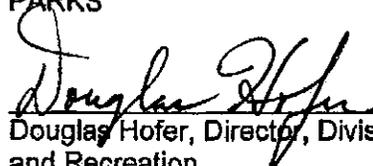
By:



Russell Marsh
Lewis and Clark Marina, LLC.

THE STATE OF SOUTH DAKOTA,
DEPARTMENT OF GAME, FISH AND
PARKS

By:



Douglas Hofer, Director, Division of Parks
and Recreation

**EXHIBIT B
SETTLEMENT AGREEMENT
LEWIS AND CLARK MARINA
"INTANGIBLE LISTING"**

The following is a list of intangible items relative to the operation of Lewis and Clark Marina which shall be transferred and provided to the successor concessionaire in accordance with Sections 2 and 3 of the Settlement Agreement:

- All trademark, copyrights and other rights and title to the name "Lewis and Clark Marina".
- Rights to the website domain "<http://lewisandclarkmarina.com>"
- All phone numbers currently listed for the marina will remain with the marina after lease transfer
- All original copies of current slip and storage leases and associated lessee contact information
- All marina slip and storage fee deposits collected in advance for future seasons
- Marina slip waiting list and all associated customer contact information
- All outstanding Service Department works orders to include customer name and contact information, date order was received, type of repair requested, status of repair or parts ordered.

**SELF-CONTAINED APPRAISAL REPORT
OF THE
STATE OF SOUTH DAKOTA PROPERTY
A ±50 ACRE SITE
IMPROVED WITH A
FULL SERVICE MARINA
COMMONLY KNOWN AS LEWIS AND CLARK MARINA
LOCATED ON
SD HIGHWAY 52
YANKTON, SOUTH DAKOTA**

CONTROL NUMBER 13-196

CLIENT

**STATE OF SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS
AS WELL AS THE CONCESSIONAIRE
ATTN: MR. DOUG HOFER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501**

DATE OF VALUE -SEPTEMBER 11, 2013

BY

**SHAYKETT APPRAISAL COMPANY, INC.
601 NORTH MINNESOTA AVENUE, SUITE 100
SIOUX FALLS, SOUTH DAKOTA 57104-8413
(605) 332-3553**

Shaykett Appraisal Company, Inc.

601 N. Minnesota Avenue, Suite 100
Sioux Falls, South Dakota 57104-8413
Phone (605) 332-3553 • Fax (605) 332-0243
Email: shaykettappraisal@shaykettappraisal.com

Kyle J. Martin
State Certified General Appraiser

Steven C. Shaykett, MAI
State Certified General Appraiser

Scott S. Elwood, MAI
State Certified General Appraiser

Travis E. Shaykett
State Registered Appraiser

Jeffrey A. Ballard
State Registered Appraiser

George P. Stavrenos
State Registered Appraiser

October 7, 2013

State of South Dakota Department of Game, Fish and Parks
As well as the Concessionaire
Attn: Mr. Doug Hofer
523 East Capitol Avenue
Pierre, South Dakota 57501

RE: Self-Contained Appraisal Report of the
State of South Dakota Property
A ±50 Square Foot Site
Improved with a Full Service Marina
Commonly Known as Lewis and Clark Marina
Located at SD Highway 52
Yankton, South Dakota
Control #13-196

Dear Mr. Hofer:

In accordance with your request, we have prepared a Self-Contained Appraisal Report of the above referenced property. Purpose of the appraisal is to estimate the "as is" leasehold interest going concern market value of the subject property. Intended use of the appraisal is to assist in setting a sale price.

After an inspection of the subject property on September 11, 2013, as well as completing an investigation and analysis necessary for the appraisal of the property, it is our opinion that the "as is" leasehold interest going concern market value of the subject property as of September 11, 2013 was \$2,800,000.

TWO MILLION, EIGHT HUNDRED THOUSAND DOLLARS

Analysis of the subject property and the data on which the appraisers' opinions are based are set forth in the following report. Appraisal has been made in conformity with generally accepted appraisal practices in accordance to the Uniform Standards of Professional Appraisal Practice (USPAP), and the State of South Dakota Department of Game, Fish and Parks as well as the Concessionaire Appraisal Guidelines provided by the client. Appraisal is subject to all assumptions, limiting conditions, and other special limiting conditions as set forth in this report, or as specifically presented below.

October 7, 2013

Mr. Hofer

Page 2

Client and intended user of the appraisal is Mr. Doug Hofer and the State of South Dakota Department of Game, Fish and Parks as well as the Concessionaire, for the intended use as stated. Use of this report without the consideration of the whole, or for any other use or by any other user is strictly prohibited, and this appraisal, when used in this manner, is null and void and of no effect.

Thank you for this opportunity to provide appraisal services. Please contact us if you have any questions or require additional information.

Respectfully submitted,



Steven C. Shaykett, MAI
State Certified General Appraiser
No. 155CG-2014



Scott S. Elwood, MAI
State Certified General Appraiser
No. 1063CG-2014

SCS/jj

LIMITING CONDITIONS

This appraisal report and the letter of transmittal and the certification are made expressly subject to the following limiting conditions, and any special limiting conditions contained elsewhere which are incorporated herein by reference.

1. This appraisal is subject to the accuracy of the legal description furnished the appraisers; however, we can assume no responsibility for matters legal in nature, nor can we render an opinion as to the title.
2. The distribution of the total valuation between land and improvements applied only under the existing program of utilization. The separate valuations for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.
3. We believe the information which was furnished to us by others is reliable, but we assume no responsibility for its accuracy. The comparable data relied upon in this appraisal is believed to be from reliable sources. However, it was not possible to inspect the comparables completely and it was necessary to rely on the information furnished by others as to said data. Therefore, the value conclusions are subject to the correctness of said data.
4. Unless otherwise indicated, all existing liens and encumbrances have been disregarded and the property is appraised as though it were free and clear of any such impediments that might affect value. The property is appraised as though it were under responsible ownership and competent management.
5. Subsurface rights (minerals and oil) were considered as they may contribute to the value of the surface rights unless otherwise indicated.
6. All furnishings and equipment, except those specifically indicated, have been disregarded by the appraisers. Only the real estate has been considered.
7. The appraisers have inspected, as far as possible, by observation, the land and the improvements thereon and have reported damage, if any, by termites, dry rot, wet rot, or other infestations as a matter of information. However, it was not possible to personally observe conditions beneath the soil or hidden structural components within the improvements. Inspection by appraisers does not guarantee the lack of the presence of any hazardous materials, gases, or other materials which could be considered to pollute the environs of the subject property. Therefore, no representations are made herein as to these matters and unless specifically considered in the report, our value estimate is subject to any such conditions that could cause a loss in value.

LIMITING CONDITIONS

8. Any sketches in this report are included to assist the reader in visualizing the property. We have made no survey of the property and assume no responsibility in connection with such matters.
9. We are not required to give testimony or to appear in court by reason of this appraisal with reference to the property in question unless arrangements have been previously made therefore.
10. Possession of this report or a copy thereof does not carry with it the right of publication. Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales or other media, nor for any purpose, without the written consent and approval of the appraisers, particularly as to valuation conclusions, the identity of the appraisers or firm with which they are connected, or any reference to the Appraisal Institute or to the MAI designation.
11. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is stated, defined and considered in the appraisal report.
12. The appraiser was not aware of the presence of soil contamination on the subject property, unless otherwise noted in this appraisal report. The effect upon market value, due to contamination was not considered in this appraisal, unless otherwise stated.
13. The appraisers were not aware of the presence of asbestos or other toxic contaminants in the building(s), unless otherwise noted in this report. The effect upon market value, due to contamination was not considered in this appraisal, unless otherwise stated.
14. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraisers. The appraisers have no knowledge of the existence of such materials on or in the property. The appraisers, however, are not qualified to detect such substances. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

LIMITING CONDITIONS

15. The appraisal is subject to any proposed improvements or additions being completed as set forth in the plans, specifications, and representations referred to in the report, and all work being performed in a good and workmanlike manner. The appraisal is further subject to the proposed improvements or additions being constructed in accordance with the regulations of the local, county, and state authorities. The plans, specifications, and representations referred to are an integral part of the appraisal report when new construction or new additions, renovations, refurbishing, or remodeling applies.
16. The limit of liability of the appraisers or Shaykett Appraisal Company, Inc., is limited to the client only and to the amount of the fee received. Further there is no accountability, obligation or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of this assignment. The appraisers are in no way responsible for the costs to correct any physical, economic, legal or any other deficiencies of the property. In the case of any third party actions brought against the client, the client will hold the appraisers completely harmless.
17. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. The appraisers have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since the appraisers have no direct evidence relating to this issue, possible noncompliance with the requirements of ADA in estimating the value of the property has not been considered.
18. Provision of an Insurable Value by the appraisers does not change the intended user or the intended purpose of the appraisal. The appraisers assume no liability for the Insurable Value estimate provided and do not guarantee that any estimate or opinion will result in the subject property being fully insured for any possible loss that may be sustained. The appraisers recommend that an insurance professional be consulted. The Insurable Value estimate may not be a reliable indication of replacement or reproduction cost for any date other than the effective date of this appraisal due to changing costs of labor and materials and due to changing building codes and governmental regulations and requirements.

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have not performed appraisal services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. I have made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the person signing this certification.
12. As of the date of this report, Scott S. Elwood, MAI has completed the requirements under the continuing education program of the Appraisal Institute.

Date

10-7-13



Scott S. Elwood, MAI

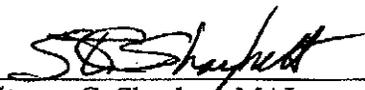
State Certified General Appraiser #1063CG-2014

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
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8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. I have not made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the person signing this certification.
12. As of the date of this report, Steven C. Shaykett, MAI has completed the requirements under the continuing education program of the Appraisal Institute.

10-7-17
Date



Steven C. Shaykett, MAI
State Certified General Appraiser #155CG-2014

SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS

Location: SD Highway 52
Yankton, South Dakota

Owner of Record: The State of South Dakota

Property Rights Appraised: Leasehold Interest

Land Area: ±50 Acres

Improvements: *Full Service Marina*
Restaurant/Bar & Office Area 6,985 SqFt
Ship Store & Canvas Shop 4,162 SqFt
Repair Shop Building 9,760 SqFt

Only the leasehold interest is appraised.

Zoning: Not subject to local zoning

Effective Date of Value: September 11, 2013

Highest and Best Use: Marina

******* VALUATION SUMMARY *******

"As Is" Leasehold Interest Going Concern Market Value:

Indicated by the Cost Approach	\$2,830,000
Indicated by the Income Capitalization Approach	\$2,800,000
Indicated by the Sales Comparison Approach	N/A
Final Estimate of Market Value:	\$2,800,000

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******* ADDENDA *******

EXHIBITS:

- 1 – Copy of Concession Lease**
- 2 – Floodplain Map**
- 3 – Photographs of Subject Property**
- 4 – Asset List**
- 5 – Article 41:13**

SUMMARY APPRAISAL REPORT

IDENTIFICATION OF THE PROPERTY

LEGAL DESCRIPTION:

Legal description was not provided to the appraisers. However, according to AgriData, Inc., subject property sits in Section 17, Township 93 North, Range 56 West. Property description provided by the client indicates subject to be ±50 acres. Area photograph with subject outlined in blue can be found on the following page.

LOCATION:

Subject property is located at the southwest corner of SD Highway 52 and Crest Road. This is approximately three miles west of Yankton and at the northeast corner of Lewis and Clark Lake.

IMPROVEMENTS:

Subject property improved with a full service marina. Subject improvement is located on a ±50 acre site. Site and improvement will be discussed in greater detail in later sections.

OWNERSHIP AND HISTORY:

Subject property is owned by the State of South Dakota for use and benefit of the Department of Game, Fish and Parks. Appraisers have been provided a Quitclaim Deed by the client dated April 26, 2002, which can be found in the Yankton County Register of Deeds Office in Book 426 at Page 326. Subject is currently under a concessionaire's lease to Lewis and Clark Marina, LLC until December 31, 2014. A copy of the lease can be found in the Addenda as Exhibit 1. Subject is not listed for sale to the knowledge of the appraisers. Although, subject will be put up for sale based on a new concessions lease near the end of the current lease.

CLIENT AND INTENDED USER

Client and intended user of the appraisal is Mr. Doug Hofer and State of South Dakota Department of Game, Fish and Parks as well as the Concessionaire for the intended use as stated.

PURPOSE AND INTENDED USE OF THE APPRAISAL

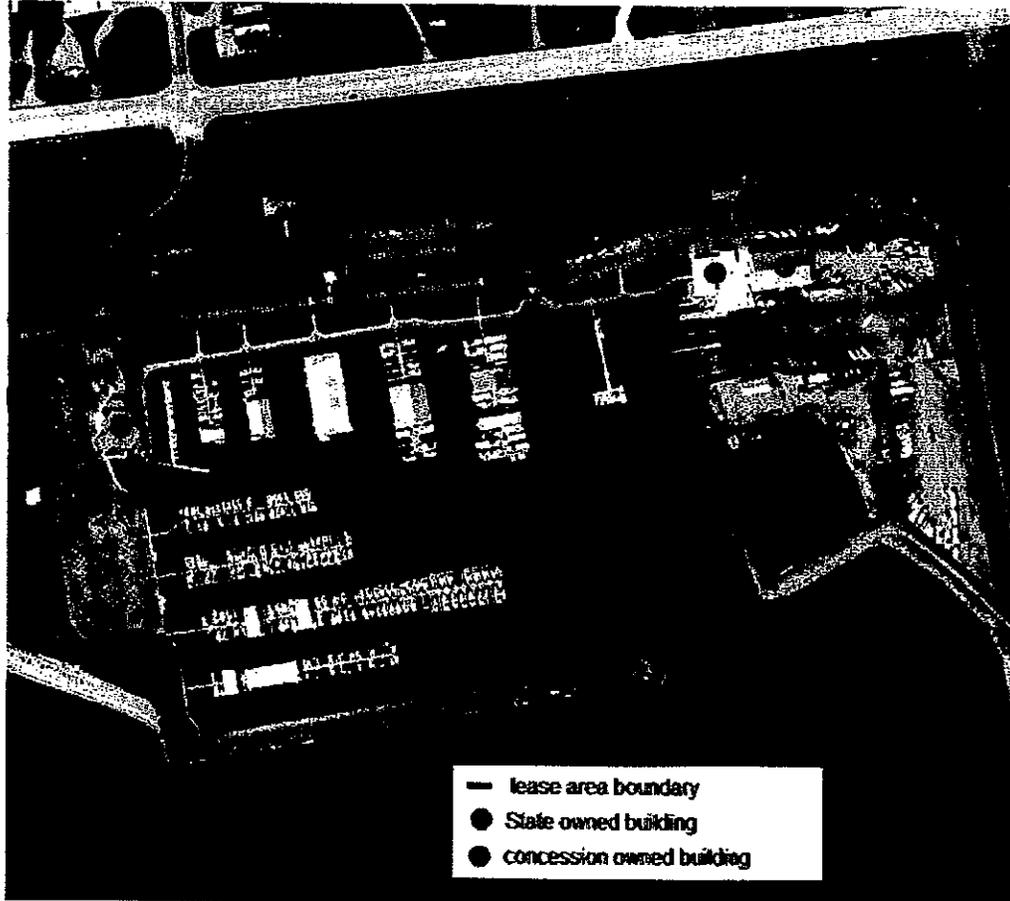
Purpose of the appraisal is to estimate the "as is" leasehold interest going concern market value of the subject property. Intended use of the appraisal is to assist in setting a sale price.

TYPE OF REPORT FORM

Appraisal is a Self-Contained Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), and the State of South Dakota Department of Game, Fish and Parks as well as the Concessionaire Appraisal Guidelines provided by the client.

SITE MAP

Lewis and Clark Marina Resort Area and building identification



State owned buildings*:

1. West comfort station
2. Restaurant building
3. Picnic shelter
4. North comfort station
5. Marina store and office building
6. Marina shop building

Concession owned building:

1. Manager's residence

**In addition to the above listed State owned buildings, SDDGFP owns all land, landscaping, marina break walls, roads, parking lots, sidewalks, boat ramp, fuel storage, leak detection and underground delivery system and all underground utilities*

DATE OF VALUE AND DATE OF THE REPORT

Effective date of value is September 11, 2013, the date of inspection by Mr. Scott S. Elwood, MAI, State Certified General Appraiser. Date of the appraisal report is the date stated on the Appraisers' Certifications.

PROPERTY RIGHTS APPRAISED

Property rights appraised are leasehold interest. Outstanding liens, mortgages, easements or other types of encumbrances are considered, but not separately addressed, unless stated elsewhere in the report.

Definitions of fee simple estate, leased fee interest and leasehold interest, as used in this report, are taken from The Dictionary of Real Estate Appraisal, Fifth Edition, published in 2010 at pages 78 and 111.

Fee Simple Estate. Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Leased Fee Interest. A freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual landlord-tenant relationship (i.e., a lease).

Leasehold Interest. The tenant's possessory interest created by a lease.

DEFINITION OF MARKET VALUE

Following is the definition of Going-Concern Value as taken from The Dictionary of Real Estate Appraisal, Fifth Edition, published in 2010 at page 88.

Going-Concern Value.

1. The market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the *market value of the going concern*.
2. The value of an operating business enterprise. Goodwill may be separately measured but is an integral component of going-concern value when it exists and is recognizable.

This definition is expanded to include and incorporate the conditions found in the market value.

Definition of market value, as used in this report, is taken from The Dictionary of Real Estate Appraisal, Fifth Edition, published in 2010 at page 122, and reads as follows:

Market Value. The most probable price which the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specific date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under duress.

PERSONAL PROPERTY

Typically, personal property is not included in the value of real estate. Definition of personal property is as follows:

Personal Property. Identifiable tangible objects that are considered by the general public as being "personal" - for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate. (USPAP, 2012 Edition)

Subject property is an operating full service marina. As such, there is substantial personal property utilized in the operation of the business. Appraisers have been provided a list of personal property by the client. The personal property is included in the final value estimate.

INTANGIBLE PROPERTY

Typically, intangible property is not included in the value of real estate. Definition of intangible property is as follows:

Intangible Property (Intangible Assets). Nonphysical assets, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities, and contracts as distinguished from physical assets such as facilities and equipment. (USPAP, 2012 Edition)

Income above and beyond the typical return to the real property is intangible property. If any intangible property is found at subject property it will be separated in the final reconciliation of value.

SCOPE OF WORK

The estimate of market value of a property usually calls for employment of three approaches to value. These approaches to value are identified as follows:

Cost Approach
Income Capitalization Approach
Sales Comparison Approach

In the Cost Approach, the appraisers estimate the new replacement cost of the improvements. A deduction is made for depreciation due to wear and tear, design and plan, and neighborhood defects. The value of the land, which is estimated by direct comparison with similar vacant sites, is then added to the depreciated cost of the improvements.

In the Income Capitalization Approach, the appraisers estimate the market rent, sometimes known as economic rent, from rents found in the market from similar properties. Next, there is a deduction for operating expenses to arrive at the net operating income. The net operating income is then capitalized into a value indication by means of one or more capitalization methods with data taken from the market.

In the Sales Comparison Approach, the appraisers compare the subject property on a similar unit of comparison with similar sale properties. Adjustments are made for all factors of dissimilarity recognized by the market. All known sales were considered and used to develop market adjustments; however, the appraisers relied on only those considered to be most similar to the property appraised. After a thorough analysis, the data is then correlated into a final value estimate by this approach.

The appraisers then correlate the indicated value estimates of the three approaches into a final value estimate. Consideration is given to the relative strengths and weaknesses of each approach, giving the most weight to the approach most commonly used by typical purchasers for the type of property appraised.

Scope of work for this appraisal assignment includes the development of two of the three approaches to value. Sales comparison approach has not been utilized due to a lack of similar unit of comparison for this type of property. Appraisers have summarized eight sales reviewed and are shown at the end of this section. Limited information was available on most of these sales. However, the summary shows two things. First there is demand for this type of property. Secondly, that appraisers could not determine a useful unit of comparison and these types of properties appear to sell based on income. Summary is found at the end of the section.

As a part of this appraisal, the appraisers have made a number of independent investigations and analysis specific to this appraisal based on data developed during the appraisal and also on data files maintained in the appraisers' office and updated on an on-going basis.

Mr. Scott S. Elwood, MAI, State Certified General Appraiser, inspected the subject property and completed most of the research, writing of the report, and development of the approaches to value. Mr. Steven C. Shaykett, MAI, State Certified General Appraiser, reviewed the appraisal as co-appraiser.

SCOPE OF WORK

Property Description and Analysis:

Appraisers obtained information from the Yankton County Planning and Zoning Office and the Yankton County Equalization Office for pertinent data relating to the subject property as needed. Subject property was viewed by Mr. Elwood on September 11, 2013. Photographs of the subject property and the surrounding area were taken on that day.

Site Description:

Mr. Elwood physically inspected the subject site and surrounding area. Site is leased from the South Dakota Department of Game, Fish and Parks (SDGFP). Site boundaries and size do not have a formal legal description and size and boundaries are based on information provided by the client. Appraisers obtained information from the Yankton County Zoning Office and public utility companies as needed for the subject site.

Description of the Improvements:

Mr. Elwood physically inspected subject's improvements. Appraisers did not measure the improvements as they were previously measured for an assignment in 2004 and have not changed in size according to the concessionaire. Appraisers met with the Concessionaire, Russ Marsh and Jeff VanMeeteren with the SDGFP while on inspection.

Rental Data Development:

Appraisers reviewed competing properties for occupancy, rental rates, expense data, and vacancy rates. Capitalization rates were reviewed based upon sales from the market of similar type properties. Appraisers then made application of an appropriate capitalization approach to estimate the value of the subject property.

Market Data Program:

Appraisers obtained data on comparable sales by researching sales occurring within the last three years which were similar use and located in the subject area or surrounding market. As discussed earlier, this search found no sales useful for direct comparison to subject.

Correlation and Final Value Estimate:

Upon completion of all the steps to gather and analyze data, a review of the value indication is made and a final value estimate conclusion.

SCOPE OF WORK

MARINA SALES SUMMARY								
Sale	Location	Sale Date	Sale Price	Site Size(Acres)	GBA	DOM	\$/GBA	Age
1	Onamia, MN	5/22/2013	\$1,525,000	518.33	62,047	1,206	\$24.58	1922
2	Lindstrom, MN	Pending	\$1,050,000	10.38	3,128	428	\$335.68	1970
3	International Falls, MN	12/28/2012	\$2,600,000	5.89	36,792	Unknown	\$70.67	Unknown
4	Orono, MN	4/7/2011	\$1,800,000	0.74	2,438	Unknown	\$738.31	1993
5	Orono, MN	11/30/2009	\$2,125,000	3.2	1,152	Unknown	\$1,844.62	1997
6	Prior Lake, MN	4/30/2010	\$1,090,000	1.76	1,176	Unknown	\$926.87	1955
7	St. Paul MSA, MN	3/21/2013	\$12,150,000	3.21	68,169	201	\$178.23	1940
8	Pierre, SD	2012	\$280,450	N/A	4,290	N/A	\$65.37	1965

Comments

1. Initial asking price of \$1,950,000. Real estate value only. Included a golf course Vacant at time of sale.
3. Related parties
5. Quit Claim Deed
6. Business value not included and was purchased separately.
7. Real estate only. Sale was two properties one being a marina and the other an office building. Remodel 2007.
8. Purchase of Leasehold Improvements. Land is leased from SDGFP. Property underwent remodel in 2011.

AREA DATA

Purpose of the area and neighborhood analysis is to review information on the social, governmental, and economic forces of the local economy and the expectations for the future. Appraisers have made a review of the relevant data for the city of Yankton, Yankton County, and South Dakota. Comparison will include a review of demographic and economic data for similar sized cities in the general region, including Huron (Beadle County), Brookings (Brookings County), Mitchell (Davison County), Aberdeen (Brown County), and Watertown (Codington County). A map of South Dakota can be found on the following page.

POPULATION TRENDS:

Table 1 illustrates the changes in population for the cities and counties analyzed, as well as the state. The table basically shows that because the cities are generally the largest part of the total county population, as the city population changes so does the county.

**TABLE 1
POPULATION COMPARISONS**

<i>COMMUNITY/ COUNTY</i>	<i>1970</i>	<i>1980</i>	<i>1990</i>	<i>2000</i>	<i>2010</i>	<i>(%) CHANGE 1980-1990</i>	<i>(%) CHANGE 1990-2000</i>	<i>(%) CHANGE 2000-2010</i>
ABERDEEN	26,476	25,851	24,927	24,658	26,091	-3.57%	-1.08%	5.81%
BROWN CO.	36,920	36,861	35,580	35,460	36,531	-3.48%	-0.34%	3.02%
BROOKINGS	13,717	14,951	16,270	18,504	22,056	8.82%	13.73%	19.20%
BROOKINGS CO.	22,158	24,457	25,207	28,220	31,965	3.07%	11.95%	13.27%
HURON	14,299	13,000	12,448	11,893	12,592	-4.25%	-4.46%	5.88%
BEADLE CO.	20,877	19,141	18,253	17,023	17,398	-4.64%	-6.74%	2.20%
MITCHELL	13,425	13,916	13,798	14,558	15,254	-0.85%	5.51%	4.78%
DA VISON CO.	17,319	17,791	17,503	18,741	19,504	-1.62%	7.07%	4.07%
WATERTOWN	13,388	15,649	17,623	20,237	21,482	12.61%	14.83%	6.15%
CODINGTON CO.	19,140	20,883	22,698	25,897	27,227	8.69%	14.09%	5.14%
YANKTON	11,919	12,011	12,703	13,528	14,454	5.76%	6.49%	6.85%
YANKTON CO.	19,039	18,946	19,252	21,652	22,438	1.62%	12.47%	3.63%
SOUTH DAKOTA	666,257	689,745	696,054	754,844	814,180	0.91%	8.45%	7.86%

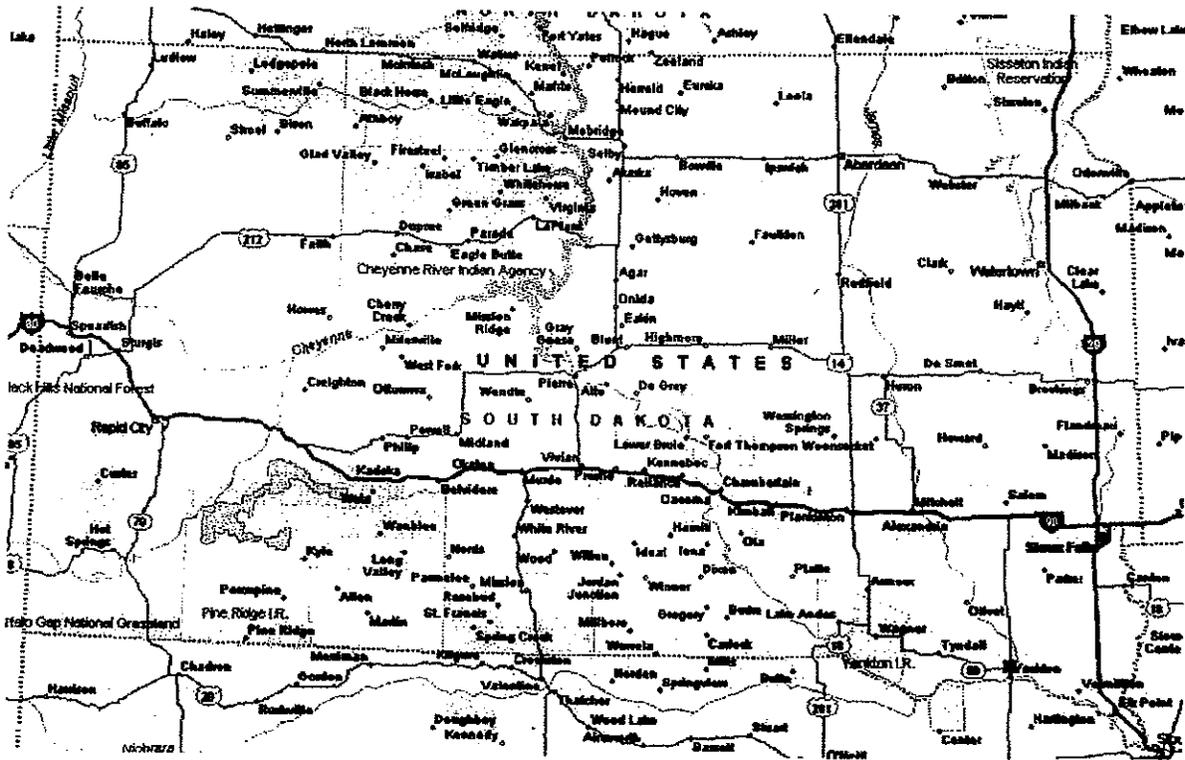
SOURCE: U.S. Census Bureau

All comparables show increase in population from 2000 to 2010, with Brookings leading in population growth at 19.20 percent, followed by Yankton at 6.85 percent, then Watertown at 6.15 percent, followed by Huron and Aberdeen, at 5.88 percent and 5.81 percent respectively. The State as a whole experienced population growth of 7.86 percent. Also, it is interesting to note that the town with the greatest population increase is served by Interstate 29 and home to the state's largest university.

REGIONAL MAP



STATE MAP



AREA DATA

Population Conclusion

Yankton has seen slow, but steady population growth since 1980. Recent population estimates would indicate this trend to continue. Yankton County has increased in population from 21,652 in 2000 to 22,438 in 2010. Factor with the greatest effect on the future population growth will be the capacity of the local community to provide employment opportunities for the community population.

ECONOMIC FORCES:

Economic forces include employment trends, wage levels, housing starts, and retail sales.

Employment Trends:

Leading employers in Yankton are shown as follows:

LEADING EMPLOYERS

<i>Name</i>	<i># Employees</i>
Avera Sacred Heart Hospital	1,000
SD Human Services	700
HyVee Food Store	450
Kolberg-Pioneer, Inc.	410
Mount Marty College	429
Wal-Mart	305
Sapa Extrusions, Inc.	300
Vishay Dale Electronics	300
First National Bank of Omaha	250
Shur-Co	250
Yankton Medical Clinic, P.C.	250

Source: Yankton Office of Economic Development

AREA DATA

Population growth and employment go hand in hand, as evidenced by Table 2. This table shows that the non-farm wage and salary employment for Yankton MISA has increased from 12,655 in 2011 to 13,080 in 2012.

**TABLE 2
YANKTON MISA ~ NON - FARM WAGE AND SALARY EMPLOYMENT**

	2006	2007	2008	2009	2010	2011	2012	TOTAL CHANGE	ANNUAL CHANGE
Non-Ag Employment	13,190	13,290	13,230	12,680	12,520	12,655	13,080	-0.83%	-0.12%

Source: SD Department of Labor

**TABLE 2A
YANKTON COUNTY ~ UNEMPLOYMENT RATES**

Community	2006 Average	2007 Average	2008 Average	2009 Average	2010 Average	2011 Average	2012 Average	Change 2008-2012
Yankton MISA	3.0%	2.6%	2.7%	5.9%	5.1%	4.7%	4.0%	1.3%

Source: SD Department of Labor

Employment Conclusion:

Three long-time employers have closed down over the last 15 years. Aalf Manufacturing shut down in 1999, Gurney Seeds closed in 2000, and Morgen Manufacturing shut down in 2001. However, overall employment rates stayed relatively steady. As shown in the table above, the national recession affected the Yankton market area beginning in 2008. 2012 Average unemployment rates has decreased to 4.0 percent from the 2011 Average rate of 4.7 percent. Growth in employment is considered to be important due to the population, which will be reaching the employment age group. If the city does not provide adequate employment opportunities, it will suffer a loss in population. Loss in population will occur as people seek alternative locations with better education and economic opportunity.

Median Household Income:

U.S. Department of Housing and Urban Development provides the Area Median Income (AMI) for all counties in South Dakota on an annual basis. The 12 year history of AMI is provided on the following page. This shows that Yankton County is similar and competitive with the comparables.

AREA DATA

TABLE 3 - MEDIAN HOUSEHOLD INCOME

<i>COUNTY</i>	<i>2000</i>	<i>2010</i>	<i>2012</i>	<i>% CHANGE 2000-2012</i>	<i>ANNUAL % CHANGE</i>
YANKTON CO.	\$44,400	\$59,400	\$61,000	37.4%	3.1%
BROWN CO.	\$44,000	\$59,900	\$61,000	38.6%	3.2%
BROOKINGS CO.	\$46,800	\$65,400	\$67,000	43.2%	3.6%
BEADLE CO.	\$43,800	\$53,300	\$61,000	39.3%	3.3%
DA VISON CO.	\$42,200	\$60,400	\$57,900	37.2%	3.1%
CODINGTON CO.	\$45,900	\$61,200	\$60,600	32.0%	2.7%

SOURCE: U.S. Dept of Housing and Urban Development

Retail Sales:

Table 4 illustrates the change in retail sales for Yankton County, as well as the state, for the period from 2003 to 2012. Retail sales are described in terms of actual dollars. Yankton has shown a steady increase since 2003, until 2009 when the national recession began to effect the area. Retail sales are now nearing pre-recession numbers.

TABLE 4 - RETAIL SALES (\$000)

<i>Year</i>	<i>Yankton Co.</i>	<i>South Dakota</i>
2003	\$310,839	\$14,323,008
2004	\$340,394	\$16,004,720
2005	\$379,390	\$18,345,210
2006	\$385,511	\$19,126,839
2007	\$421,778	\$20,536,545
2008	\$460,922	\$22,310,663
2009	\$399,934	\$20,430,745
2010	\$414,804	\$22,354,312
2011	\$478,893	\$25,472,464
2012	\$447,297	\$29,215,473
Ann. Change	4.39%	10.40%

Source: South Dakota Department of Revenue

Housing Starts

Number of housing starts is affected by population growth, the affordability of the cost of mortgage money, and the supply of existing homes. As these factors all are generally reflective of the health of a local economy, the number of housing starts is generally a good barometer of the expansion of a local economy. Table 5 on the following page illustrates the housing starts for Yankton from 2006 to 2012. This table reflects the slow but steady growth in population. According to an official in the Public Works Office, 2005 was a record year, with 93 building permits at their highest over the eight years, and 2009 building permits were down near the level of 2002, which is similar to other communities in eastern South Dakota.

AREA DATA

TABLE 5 - BUILDING PERMITS

<i>Property Type</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Single-Family	47	44	40	29	22	20	21
2-Unit Multi-Family	6	4	0	2	2	0	0
3 and 4 Unit Multi-Family	0	0	0	0	0	0	0
5+ Unit Multi-Family	24	44	32	8	8	0	6
Total	77	92	72	39	32	20	27

Source: SOCDs

Economic Conclusion

Yankton and Yankton County compare favorably with the comparison cities in the region and the state when compared for most economic factors. Population continues to gradually increase, and employment base has leveled off in the last couple of years. Overall, the economy of Yankton is considered to have slow, but steady growth. The ability of the local economy and population to grow will be in direct correlation to growth in the local employment. There are no known factors that would indicate a significant change either positive or negative in the direction the local economy will occur in the near future.

GOVERNMENTAL FORCES:

Governmental environment of the area consists of local and state regulations affecting the ownership, development, and transfer of real property. Yankton is a charter city with a mayor and commission form of government. Planning Commission is appointed by the City Commission and is responsible for the creation and administration of planning regulations, zoning laws, and building standards. Yankton is the county seat for Yankton County, with the county regulatory board being an elected board. There are also elected and appointed officials that control the operations of the county departments.

Tax Structure:

South Dakota has no income, personal property, or inventory tax. State governmental operations are supported by a sales tax of 4.0 percent. Local governments are supported based upon real estate and sales taxes. Sales tax in Yankton is 2.0 percent. Yankton County is the local property tax authority. The county taxes are real estate based. County calculates the tax and distributes the funds. The taxes are distributed to the other government sectors based upon the budget needs of that sector.

ENVIRONMENTAL FORCES:

Environmental forces include location, topography, and availability of utilities and transportation systems.

Location

Yankton County is South Dakota's eighth most populace county and is located in southeastern South Dakota, approximately 85 miles southwest of Sioux Falls, approximately 40 miles west of the Iowa border, and across the Missouri River from the Nebraska border.

AREA DATA

Topography:

Topography of Yankton is a mix of nearly level to gently rolling because of location along the Missouri River. Soil conditions are reported to be generally good, with no pilings or special foundations normally required. Exception is the area near the Missouri River.

Utilities:

Utilities are available to almost all sites in the city. These utilities include water, sewer, electricity, and natural gas. The rates for these services are comparable to the rates for other cities in the region. Utilities available at the subject are discussed in more depth in the Site Description section.

Transportation:

Primary access to Yankton is via US Highway 81 (north/south) and SD Highway 50 (east/west). SD Highway 50 has access to Interstate 29 approximately 33 miles east of the city. US Highway 81 has access to Interstate 90 approximately 55 miles north of the city. Yankton serves as a trade area of approximately 50 miles, which has helped develop the retail trade plus health care in the community.

Education and Recreation:

Higher education is offered at Mount Marty College, a private university. Being located on the Missouri River, the city has a number of campgrounds, swimming areas and parks, including Gavins Point Dam and Lewis and Clark Recreation Area. This is a major source of recreation which draws not only permanent residents, but also produces substantial tourism and recreation dollars from the region.

AREA DATA SUMMARY:

In summary, the population data indicates that Yankton is growing at a level slower than the state, but is comparable to competitive communities. Economic capacity of the population is increasing at a rate similar to the other cities. Median household income is similar to the directly compared counties. Combination of slow population growth and improved buying capacity by a smaller group has made an atmosphere of slow, but steady economic growth. Stable economic growth is reflected in the number of building permits issued and the retail sales growth. Data presented demonstrates that Yankton has a slow population growth pattern. Increase in building permits over the last few years is due to changes in household formation and the slow population growth. The development of a new Hy-Vee grocery store, Super Wal-Mart and Menards, retail stores, and smaller commercial properties in the last few years reflects continued growth. Retail sales show upward trends and suggest that Yankton is becoming more of a retail trade center. Attraction of new business and industry, as well as the expansion of existing business and industry in the market, could significantly expand the city's economy. In fact, with the opening of the Super Wal-Mart and Menards on the north side of the city, the city should continue to attract retail customers from the surrounding area. In conclusion, all segments of the market are expected to show slow growth, placing demand on all real estate types commensurate with the activity level.

NEIGHBORHOOD DATA

Subject property is located on West 8th Street/Highway 52, outside the city limits of Yankton. Neighborhood is described as the entire town, since all areas of the community generally have similar accessibility to employment, services, and social centers. Neighborhood map and neighborhood aerial at the end of this section show the location of the subject property in relationship to the city.

Immediate neighborhood is not easily defined by man-made boundaries. Neighborhood is bounded to the south by the Missouri River and Lewis and Clark Lake. West 8th Street/Highway 52 is the primary access to the neighborhood and also the only commercial corridor in this neighborhood. West 8th Street continues into the city limits of Yankton, approximately two miles to the east of subject. Subject neighborhood is dominated by the Lewis and Clark Recreation area and recreational uses at the Missouri River and Lewis and Clark Lake. Most commercial uses in this neighborhood cater to the recreation users. So, subject neighborhood for commercial demand is somewhat seasonal in nature. However, there are a number of homes in the Riverside Acres development approximately one-half mile south of Highway 52 on Deer Boulevard. There are also a number of residential uses west of subject on the north side of Highway 52. Commercial uses include convenience stores, power sports shops, campgrounds and RV camper parking, marina, and storage facilities among others.

According to the state website, Lewis and Clark Recreation Area consists of 409 paved campsites, 17 camping cabins, swimming beaches and boater beaches, boat ramps and docks, archery range, six miles of bike trail, 1.2 miles of nature trail, 4.1 miles of multi-use trail, picnic shelters and grills, dump stations, fish cleaning stations, public restroom and shower facilities, equestrian base camp with eight sites and corrals, and a disc golf course. In addition a new 24-unit motel and 17 modern cabins were also recently added.

Most of the recent commercial growth in Yankton has been near the intersection of Highway 50 and Broadway Avenue near the new Wal-Mart store, which is at the corner of State Highway 50 and U.S. Highway 81. There is also a new Menards near the northeast corner of the same intersection. Northwest corner is currently undeveloped and owned by the State of South Dakota. However, the City of Yankton is exploring options to purchase the approximately 32.0 acres at this corner. This corner is zoned for commercial use, but eventual use is speculative at this point if the City were to purchase the site. Older and newer commercial applications are located along Broadway Avenue, with some industrial and agricultural uses to the north along Highway 81.

Yankton is easily accessible from the north and south by U.S. Highway 81, and from the east and west by SD Highway 50. Both of these roads are improved five-lane concrete roads and serve Yankton from all four directions. Currently, both roads pass through the Central Business District. Broadway Avenue is where the development of community retail and commercial properties has concentrated. It also provides truck access to the north, which leads to Interstate 90, some 60 miles to the north and south into Nebraska, as well as provides access to the new school facilities in the northern part of Yankton.

NEIGHBORHOOD DATA

Northeast corner of town has the Hillcrest Country Club area and new housing development areas, with the municipal airport located north of the country club. In the northwest quadrant of Yankton is the Fox Run Municipal Golf Course, another new housing development, and an industrial park area. Yankton developed a new high school complex approximately 15 years ago in this area, which has spurred housing development in this area.

Growth of the city is generally in a northerly pattern, due to the Missouri River on the southern boundary. Yankton is somewhat unique in that residential development in rural subdivisions is common west of the city along the river. Desirable areas west of the city that offer a view of the river and access to recreational activities are found in a five mile stretch along the Missouri River to Gavins Point Dam. These housing areas provide amenities not available to in-town locations.

Market Conditions:

General overall economic conditions were discussed and summarized in the Area Data section of this report. This section relates specifically to the commercial real estate segment and to the subject property as it relates to exposure time and marketing period.

Following three paragraphs are taken directly from Advisory Opinion AO-7 of the Uniform Standards of Professional Appraisal Practice, 2012 Edition. These paragraphs help explain marketing time and methods to estimate.

The reasonable marketing time is an estimate of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal.

Rationale and Method for Estimating Marketing Time

The development of marketing time opinion uses some of the same data analyzed in the process of estimating a reasonable exposure time opinion as part of the appraisal process and is not intended to be a prediction of a date of sale or a one-line statement. It is an integral part of the analyses conducted during the appraisal assignment. The opinion may be a range and can be based on one or more of the following:

- * statistical information about days on market;
- * information gathered through sales verification;
- * interviews of market participants; and
- * anticipated changes in market conditions

Related information garnered through this process includes other market conditions that may affect marketing time, such as the identification of typical buyers and sellers for the type of real or personal property involved and typical equity investment levels and/or financing terms. The reasonable marketing time is a function of price, time, use, and anticipated market conditions, such as changes in the cost and availability of funds; and is not an isolated opinion of time alone.

Subject property is a unique property. Subject is the only full-service marina on Lewis and Clark Lake. There are a limited number of marinas in general, so sales information is minimal.

NEIGHBORHOOD DATA

Exposure Time:

Exposure time is presumed to precede the effective date of the appraisal. Exposure time relative to subject is estimated at 12 months or less. Basis for this estimated exposure time is conversation with brokers and County personnel who track movement of sites and commercial properties in this market.

Sales of commercial property in Yankton, as evidenced by the sales reviewed by the appraisers, have remained at a slow, but steady pace over the past several years. Broker conversations indicated if the property was correctly priced, average marketing time is typically under 12 months.

It is difficult to estimate the exposure time of commercial properties in the Yankton market without a central service that tabulates this type of information. However, research by the appraisers and the broker conversations support the conclusion that subject market exposure time would be under 12 months. Appraisers have estimated that subject, properly priced and advertised, would have an exposure time of less than one year.

Marketing time reflects the period after the value date required to sell the property at market value. This is heavily influenced by historical exposure time, but tempered by current economic conditions and by the pricing of the property. The Yankton market area has maintained a stable real estate market, with current conditions reasonably similar to the last 12 months. Interest rates have remained low and are expected to favorably affect the feasibility of most projects. Demand appears to remain slow in most areas of the market.

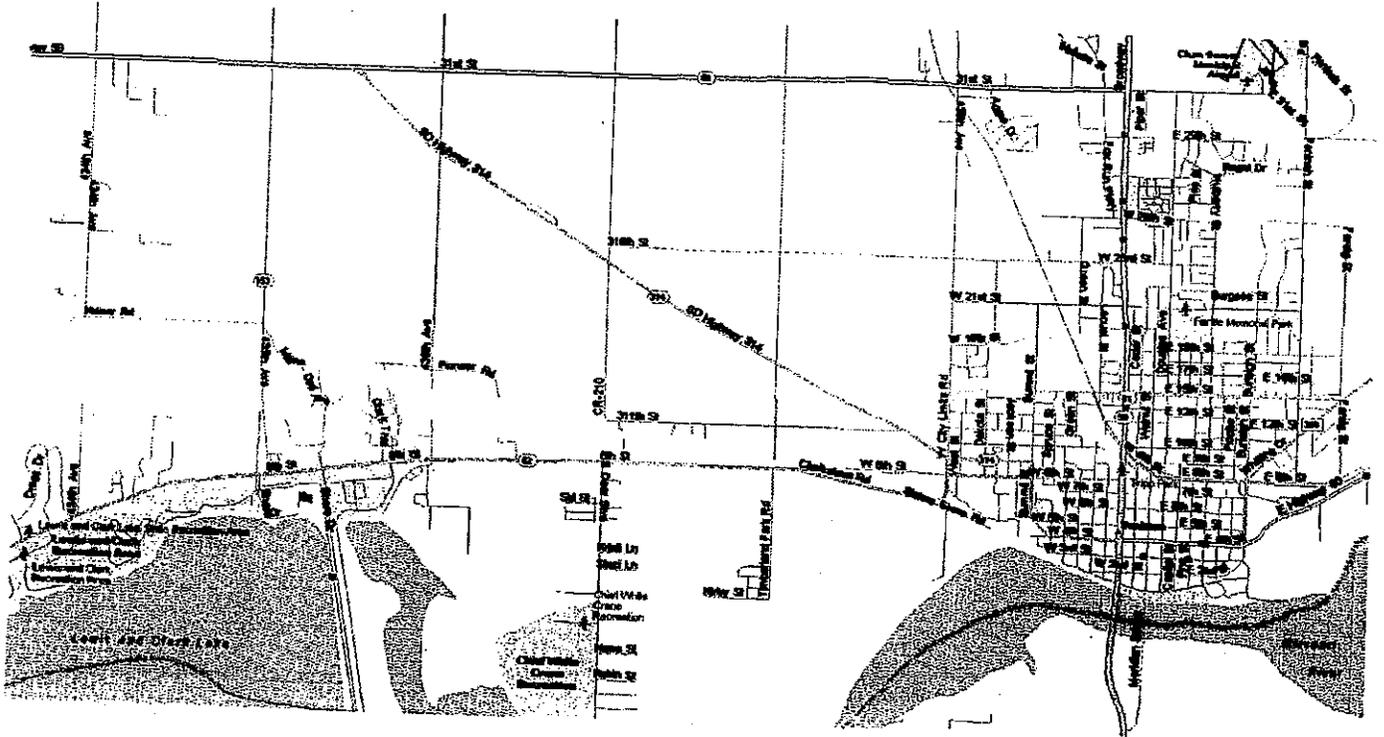
Subject property is also unique as the property rights appraised and offered for sale are for a leasehold interest. Underlying fee simple estate is held by the US Government and leased to the State of South Dakota, which in turn is leased to Lewis and Clark Marina LLC. Thus, there are additional rules and guidelines for the sale of the property, including a public offering of the property for bids. It appears this process could take up to approximately one year. Days on market for marina sales reviewed by the appraisers' shows a range of 201 days to 1,206 days. These sales are shown in the Sales Summary in the Scope of Work.

Yankton area market is expected to continue to be a slowly growing market, with slow increases in employment and population. As the employment opportunities continue to grow, so does the demand for all classes of real estate. Therefore, it is the conclusion of the appraisers that market exposure and marketing time should both be considered 12 months or less at the value estimate.

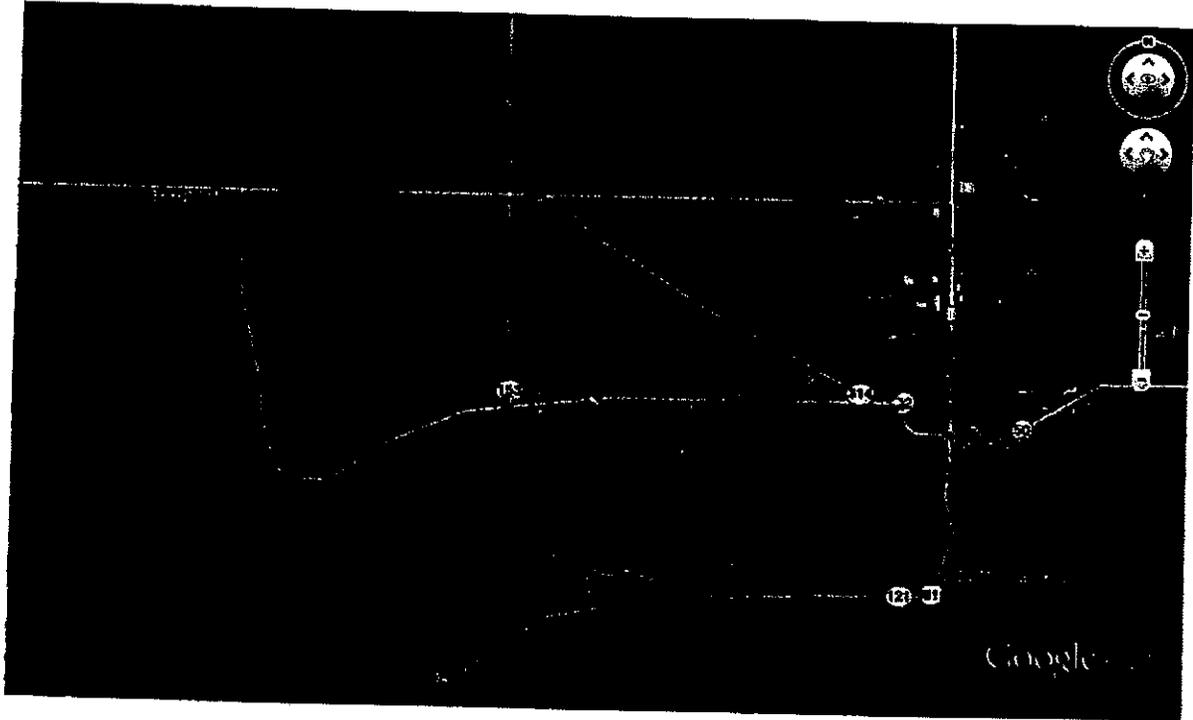
Conclusion:

Subject property is located outside of city limits. Subject's immediate neighborhood is primarily a recreation area in conjunction with the Lewis and Clark Recreation Area and has a number of rural residential subdivisions. Subject neighborhood is a destination area and somewhat seasonal in nature. Subject's neighborhood is considered average compared to similar commercial neighborhoods, but good for subjects designed use as a marina.

NEIGHBORHOOD MAP



NEIGHBORHOOD AERIAL



ZONING AND PRIVATE RESTRICTIONS

Subject property is owned by the State of South Dakota. According to personnel with the Yankton County Planning and Zoning Office, land owned by the State is not subject to local zoning.

In the course of this appraisal, the appraisers have not been provided with or acquired on their own a legal opinion as to the zoning and private restrictions at the subject property. Interpretations of the zoning ordinances are based upon an examination of the zoning ordinances as they apply to the subject property by the appraisers, and should not be construed to represent a legal opinion of the zoning ordinances as they apply to the subject property. Also, the appraisers' review of the Courthouse records should not be construed to represent a legal opinion of the private restrictions at the subject property. Such legal opinions could be obtained by consulting an attorney, and such consultation is recommended by the appraisers.

Conclusion:

Subject site is not subject to any local zoning restrictions. There are no other private restrictions what would affect the highest and best use of the property. Exception being the land lease which can be found in the Addenda as Exhibit 1.

ASSESSED VALUE AND TAX DATA

Subject property is owned by the State of South Dakota, thus not assessed and exempt from real estate taxes. Subject property is likely to remain under the current ownership, thus not likely to future taxation. No further analysis is necessary for this assignment.

SITE DESCRIPTION

Subject is an irregular shaped site of ± 50 acres, according to information provided by the client. Aerial photograph can be found at the end of this section as well as on Page 2. Subject does not have a defined legal description, so size is based on information provided by the client. Subject property has approximately 1,645 feet of frontage on the south side of Highway 52 and approximately 1,200 feet of frontage on the west side of Crest Road.

Access to the subject is from 435th Avenue through the Lewis and Clark State Park. General access to the neighborhood is from Highway 52, on the north side of subject. Highway 52 is a four-lane paved highway.

Appraisers have not been provided with a copy of the soil tests for the subject site, but other developments in the area show typical site preparation. This area has naturally rolling topography with mature trees. Portion of subject site is water; the actual marina area is typical for use. Majority of the site does slope towards the water.

Floodplain Statement:

According to a review of Site to Do Business available floodplain maps, the marina portion of subject site is located in the high flood risk area, assumed by the appraisers to be the 100 year flood plain. This is not uncommon for this type of property as subject is located on Lewis and Clark Lake. A copy of the floodplain map is located in the Addenda as Exhibit 2. Map number for the subject property is 46135C0450D.

Subject site is served by all utilities common to this area. This includes water service provided by B-Y Water District. Electrical service by Bon Homme-Yankton Electrical Association. Natural gas is not available at subject site nor is public sewers. Several providers are available for local telephone service and internet. Information regarding utilities is provided as general information, not as a statement of fact. Only a detailed evaluation by a qualified person would determine adequacy and acceptability for a particular use.

Subject has typical utility easements and no private restrictions. Exception being those imposed by the concessionaire's lease, which is included in the Addenda as Exhibit 1.

Subject property is located in an area of high flood risk due to location on the lake and also stores fuel underground and runs fuel lines under water to the fuel dock. Subject does have a leak detection system. Both the tanks and underground piping associated with the fueling system are owned by the State.

Conclusion:

Subject site is located in a developed recreational area within the Lewis and Clark State Park. Subject also has access to all public utilities common to the area. Site has normal site preparation costs for this area. Total site size is ± 50 acres and has approximately 1,645 feet of frontage on the south side of Highway 52 and approximately 1,200 feet of frontage on the west side of Crest Road. Portions of subject property are located in the floodplain; however, this is necessary for the operation of a full service marina. Overall, the subject site is considered to be average in desirability and marketability for similar marina sites.

AERIAL PHOTOGRAPH



DESCRIPTION OF THE IMPROVEMENTS

Subject property is improved with a full service marina including a convenience store, repair shop, and restaurant as well as other ancillary improvements associated with the Lewis and Clark Recreation area. Subject property is currently under a concessionaire's lease until December 31, 2014. Leasehold improvements include all personal property such as docks and FF&E. Photographs of subject property and surrounding area can be found in the Addenda as Exhibit 3.

Source: The appraisers' personal inspection.

Restaurant:

Date of Construction: Unknown

Shape: Highly irregular

Size: 6,985 square feet

Height: Ceiling height is 16 feet

Foundation: Unknown

Frame: Wood

Interior: Epoxy sealed concrete floor and laminate flooring, painted and textured drywall walls, acoustical and wood ceiling. Kitchen area has tile flooring with fiberglass reinforced panel (FRP) walls and ceiling. Restaurant area is largely open with window viewing the marina and lake. At the time of inspection there were 13 tables and nine booths along with seating at the bar and island.

Exterior: Painted lap and shake style cement board siding

Roof: Flat

Plumbing: Two restrooms with no total fixtures

Heating & A/C: Forced air furnace as well as central air conditioning.

Electrical: 800 Amps; Adequate

Special Features: Personal property in the kitchen; large patio with additional exterior seating

Quality: Average

Functional Utility: Average

Condition: Average, showing normal wear and tear for age and use.

DESCRIPTION OF THE IMPROVEMENTS

Site Improvements: Sod; Substantial retaining wall and shrubbery on the east side

Main Shop:
Date of Construction: Unknown

Shape: Rectangular

Size: 9,760 square feet

Height: 20 feet

Foundation: Unknown

Frame: Steel

Interior: Unfinished concrete and exposed steel walls and ceiling. There is a small portion enclosed with heat and has finished drywall walls and ceiling.

Exterior: Steel sheet metal

Roof: Gable; Steel sheet metal

Plumbing: Standard quality

Heating & A/C: Force air furnace as well as central air conditioning for small area, majority is unheated.

Electrical: 200 Amp; Adequate

Special Features: Overhead doors with electric openers. Sizes are 10' x 12', 18' x 12', and 20' x 24'.

Quality: Average

Functional Utility: Average

Condition: Fair, showing heavy wear and tear for age and use.

Site Improvements: Asphalt and concrete

DESCRIPTION OF THE IMPROVEMENTS

Small Shop and C-Store:

Date of Construction: Unknown

Shape: Slightly irregular

Size: 4,162 square feet

Height: 8-12 feet

Foundation: Unknown

Frame: Post and wood

Interior: Shop - Unfinished concrete floor, steel liner panel ceiling, and unfinished drywall walls. Generally open and utilized as a shop building.
Convenience Store – Commercial tile flooring, acoustical drop in tile, and painted drywall walls with some slat walls.

Exterior: Steel sheet metal

Roof: Gable; Steel sheet metal

Plumbing: Standard quality

Heating & A/C: Forced air furnace as well as central air conditioning

Electrical: 200 Amp; Adequate

Special Features: One overhead door

Quality: Average

Functional Utility: Average

Condition: Average; showing normal wear and tear for age and use. Exterior skin was replaced and interior of the C-store was remodeled in 2009.

Site Improvements: Asphalt and concrete

DESCRIPTION OF THE IMPROVEMENTS

Other Improvements:

Subject's operation as a marina also benefits from several other buildings located on the site and owned by the State. These would include two restroom facilities and two picnic shelters. These buildings are shown on the aerial map on page 2.

Leasehold in the Improvements:

Remodel of the C-store and small shop area was not approved by the SDGF&P department in accordance with the lease agreement. Therefore, no possessory interest was granted in these improvements. This includes the new concrete pad between the main shop and the small shop/c-store.

Overall the improvements have been maintained in fair to average condition and are functional for designed use as a full-service marina.

Docks: Summary:

Information on the docks is largely based the Docking System Condition Assessment report prepared by SmithGroup JJR. Table below shows the number of open and covered docks.

Docks			
	Open	Covered	Total
Dock A	22	6	28
Dock B	20	10	30
Dock C	2	22	24
Dock D	16	12	28
Dock E	24	4	28
Dock F	52	0	52
Dock G	61	0	61
Dock H	80	8	88
Dock I	48	24	72
Total	325	86	411

There are also a total of 34 mooring pads for personal water craft.

Age of the docks is from the 1970's/1980's with additions in 1990's and 2000's. Dockage was originally manufactured by Atlantic Meeco. The floating docks are primarily galvanized steel frame with concrete surface. Finger piers are connected to the head walks by a combination of bolts and welded joints. Majority of the flotation is provided via polystyrene billets and panels. Flotation material does show some damage from rodents.

DESCRIPTION OF THE IMPROVEMENTS

All docks have electrical service and water service to each slip. Docks are in fair to average condition for age and use. Physical Depreciation is estimated at 50 percent.

Gas Dock:

The gas dock has a 4 foot wide entrance runway 40 feet long with and 8' x 152' services dock that has a 28'x46' cross dock at the end. This dock has a 10' x 12' steel shed and two fuel dispensing pumps as well as credit card machine, which is currently not functioning. Dock has sanitary sewer facilities with shore holding tanks and fresh water line. Dock is similar in construction to the other docks. The fuel system was recently updated.

Courtesy Dock:

This dock is located near the restaurant building and has a 4 foot wide entrance runway 40 feet long with an 8' x 80' galvanized floating dock with concrete deck. There is an additional 5' x 140' floating dock for personal water craft to the north of the courtesy dock. Neither dock has shore service.

Dock Conclusion:

Overall the docks are in average condition for age and use. Report by SmithGroup JJR indicated that there were some electrical issues which needed attention. According to the lessee, these issues have all been resolved.

Modular House:

Modular home is a 1988 Atlantic, 27 foot wide by 60.3 foot long modular house. Exterior of the home is painted hardboard siding and gable roof with asphalt shingles. Interior has two-bedrooms, a full bath with sub/shower combination. The master bedroom has a walk-in closet and full bath. The living area has vaulted ceiling. Home has forced air furnace and central air conditioning. Overall the home appears to be in average condition for age and use. Roof was replaced in 2009 and siding was repainted in 2011.

Equipment & FF & E:

Appraisers have been provided a full asset list and FF & E list from the concessionaire. A copy of this list can be found in the Addenda as Exhibit 4. This list includes substantial personal property such as a boat lift, machinery and rental boats, but also smaller items such as saws and drill bits. In general, the FF & E and equipment appeared to be in average conditions. Subject property also benefits from the liquor license associated with the restaurant. Currently there are no additional licenses available in Yankton County, so this does have value.

HIGHEST AND BEST USE

Real estate is appraised in its highest and best use. In determining the highest and best use of a property, consideration must be given to the land as if vacant, and then considering the improvements. First, it is necessary to define highest and best use. In this appraisal, the appraisers have relied on the definition of highest and best use as defined in The Dictionary of Real Estate Appraisal, Fifth Edition, published in 2010.

Highest and Best Use. The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are:

1. Legal permissibility
2. Physical possibility
3. Financial feasibility
4. Maximum productivity

In the evaluation of the highest and best use of a property, the appraisers have reviewed the four criteria listed above and summarized this analysis for the subject below.

Legal Permissibility:

Analysis of the legal permissibility, in relation to the highest and best use, examines those legal factors which could preclude the development of certain uses of the subject site or improvements. The development of the subject site or property to its highest and best use can be limited by long term leases, zoning, private deed restriction, building codes, historic district controls, or environmental regulations.

Physical Possibility:

Physical possibility in relationship to the highest and best use examines the physical features of the subject site or improvements which can preclude development of certain uses of the subject site or improvements. The development of the subject site to its highest and best use can be limited by the size, configuration, location and availability of utilities, and terrain of the site. The development of the subject improvements to their highest and best use can be limited by the size, design, type, and condition of the improvement(s).

Financial Feasibility:

In evaluating the financially feasible uses of the subject site or improvement, the analysis considers those applications to the subject site which would yield a positive return on investment in consideration of the constraints of legal permissibility and physical possibilities of the subject site or improvements. To estimate if potential developments of the vacant site or uses of the existing improvements provide for a market acceptable return on development, an analysis is completed of the demand and supply in a neighborhood for the indicated physically possible and financially feasible uses. For a vacant site, the supply and demand of a given use must be at an equilibrium price level adequate enough to provide for returns that would be market acceptable to be financially feasible. For an improved property, the financially feasible uses are those uses which provide for a positive economic income stream to the property.

HIGHEST AND BEST USE

Maximum Profitability:

In the evaluation of the financially feasible uses of the subject site or improvements, that utilization which produces the highest value, conducive to a market required rate of return, is considered to be the highest and best use of the site or improvements.

The constraints listed on the previous page can be considered filters to allow the proposal of first general and then more specific alternative uses which can be tested for maximal return. Application of the four tests noted on the previous page are applied in light of the conclusions drawn regarding area, city, and neighborhood characteristics, interpreted in terms of any social, economic, governmental, or environmental physical forces, and other forces of real estate principals which could likely affect the proposed highest and best use options.

APPLICATION TO THE SUBJECT PROPERTY:

Subject property is the leasehold interest created by concession agreement. This agreement is a private restriction within the legal permissible criteria and itself limits the consideration of highest and best use, and as long as it is also a use within the zoning. Since subject is owned by the State of South Dakota, it is not affected by local zoning ordinances. By private restriction, the subject property can only be used for its current use. Improvements were described earlier in the report and are adequate for the allowed use. It is the opinion of the appraisers that the highest and best use of the subject property is its current use as a full service marina.

COST APPROACH

In this report, the application of the Cost Approach is as follows:

- * Estimate Value of the Site by Direct Comparison
- * Estimate Replacement Cost New of the Improvements Less Observed
- * Depreciation From All Causes
- * Summary and Value Indication

Estimate Value of the Site by Direct Comparison:

Subject property is on land leased from the South Dakota Department of Game, Fish and Parks as part of the concession agreement. There may be value in the land leasehold, given the annual land rent in relationship to the potential value of river front land and marina improvements. However, it does not appear that the concession agreement would allow for the subject property to transfer their right in the agreement to achieve any greater benefit in the land lease. For this reason, the appraisers have considered the land rent to be equivalent to market rent, so there would be no measurable value in the land leasehold. Therefore, no land value estimate will be included in the value of the subject property.

Estimate Replacement Cost New of the Improvements:

Appraisers have been provided an asset list by the concessionaire, which includes his estimated depreciated values of his personal property. A copy of this list can be found on the following page. A complete list of personal property without values estimated that includes smaller value items can be found in the Addenda as Exhibit 4. List on the following page includes all major personal property, FF & E, and equipment. Larger value items are itemized and a lump sum is included for office and restaurant equipment, service tools and equipment, and intangible assets. Total value for the real property estimated by the concessionaire is \$2,922,510 and total intangible value listed is \$1,950,000.

As a check on the values provided to the appraisers by the concessionaire, the appraisers have relied upon the Marshall and Swift Cost Valuation Service for valuation of the boat dockage and other equipment available through this publication. This is a nationally known cost service which adjusts its building costs to the local area. Marshall and Swift Valuation Cost estimates typically include architectural and engineering fees, plans, building inspections, material, labor, normal interest on building funds, normal site preparation, utility costs from the site to lot line, and contractor overhead such as insurance, workman's compensation and security during construction. These are a combination of "hard costs," or those costs such as materials, labor and site preparation, and "soft costs," such as insurance, building inspections and engineering fees. Since these are included in the cost estimate, they are not individually addressed by the appraisers.

Appraisers relied on NADA Guides website to check the value of vehicles, ATV's, and water craft. Not all models listed were available. However, the models reviewed showed similar values to the owners estimated value. Thus, it appears the estimated cost for the other models are also reasonable.

COST APPROACH

Lewis Clark Marina, LLC

Bill of Sale Items

9/11/2013

Qty	Description			
	Rental Docks steel frame, concrete decks			
7	48x18 ft open slips			
6	42x16 ft covered slips			
34	42x16 ft open slips			
30	36x14 ft covered slips			
16	36x14 ft open slips			
4	36x16 ft open slips			
6	40x16 ft open slips			
8	30x12 ft covered slips			
102	30x12 ft open slips			
18	30x14 open slips			
20	24x10 covered slips			
100	24x10 open slips			
20	18x10 covered			
40	18x10 open			
409	Total Slip Count			
50	Personal Watercraft Slips, platforms All new 2008	52 units attached to new Dock 7 units on A dock 11 on G dock		
	Fuel Dock, Sanitation, Rental & Courtesy Dock: 24 HR Gasoline Credit Card terminal, 2 Dispensers	5'x16'2" with 28'x56" Island and 10'x12' Rental shed C/Card Term. New 2010 Dispenser replaced 2008		
	Restaurant Courtesy Dock, PWFC dock location	Sanitation boat pump out system, tank replaced, twin vacuum pumps added		
		5'x80'	All Dock Total	2,345,000

Year	Service equipment, vehicles, surplus			
1 1994	18' VIP open bow boat w/trailer			4,500
1 1999	21' Mirada deck boat w/trailer			8,000
1 1970	Scottie MSC Cabin boat 27' w/6 cyl stern drive (service boat)	88-227		8,000
1 1987	Dorian PLF boat 35' w/ 115 hp outboard	PLF88017E787		0
1 1988	MSC pontoon Work boat w/Custom electric winch gin pole	L11100288888	recent 4 stroke engine install	2,500
1 1988	MSC pontoon work boat platform 18'			3,500
1 1989	Alumacraft ACB fishing boat 16'			800
1 1986	Shore Landr Boat trailer	ACBL6040L889		900
1 1988	MIDI boat trailer	1MDAL2L12TF789079		750
1 1979	YUKO boat trailer	1MDBEET15JD382858		
1 1986	Homemade boat trailer	8T2838		
1 1987	SMI trailer	318981		
1 1987	MIDI boat trailer 6 x 18	HRE2400487001		
1 1987	SPAR trailer 6 x 28	1MDA8MN14HC306220		
1 1988	Boat trailer 6 x 18	1PB8B16M5H1000878		
1	Custom shrinkwrap trailer	1B91A1649JS000013		
1	Custom boat stand trailer			350
1	Custom 500 Gallon water tank trailer w/supply pump			500
1 1977	IH 1850 boom truck	DO715GCA12820	scrap iron price	750
1 1988	Ford F-600 tow truck, Custom front mount hyd. Multi hitch	1FDNF60HXJA59327		1,500
1 1999	Ford F-250 4x4 with Snow plow			44,500
1 1985	Ford Ranger pickup			\$11,750
1 1992	IH Boom Truck w/remote aerial bucket			\$1,000
4 1999	Electric golf carts			\$14,000
1 2007	Polaris 4x4 ATV		2 with recent batteries replaced	\$8,500
1 1984	John Deere 2010 dsl tractor, use with Hyd. Trailer			\$5,000
1	Custom Hydraulic lift trailer 20,000 LB capacity			\$8,500
1	Marine Travel Lift self propelled Boat Lift 20 Ton Capacity			\$12,000
1 1997	Case 688 Telehandler, Quick tach forks, custom multi hitch			\$65,000
1 2001	Caterpillar TH63 Telehandler, custom long forks		recent tire replacement	\$24,000
1 1954	Farmall H tractor			\$28,000
1 2004	DCT 6x18 wood deck car trailer			\$850
1 1978	Ford F 250 flatbed w/winterization equipment			\$1,250
1 1995	GMC Service van, custom parts bins, repair equipment			\$3,500
	Rental Boats			\$2,500
2 2008	18' Weeres Pontoons w/ 25HP motors		Purchased new	\$12,000
1 2007	18' Weeres Pontoon w/ 40HP motor		Purchased new	\$7,000
1 2007	20' Weeres Pontoon w/ 40HP motor		Purchased new	\$7,500
1 2006	18' Weeres Pontoon w/ 40HP motor		Purchased new	\$8,000
1 2010	24' Starcraft Pontoon w/60HP motor		Used, added to fleet 2010	\$14,000
1 2004	20' Sea Ray Sundeck open bow w/5.0L motor & trailer		Purchased new	\$18,000
1 2008	19' Sea Ray open bow w/ 4.3L motor & trailer		Used, added to fleet 2011	\$18,000
1 2010	20' Sea Ray open bow w/4.3L motor & trailer		Purchased new	\$18,500
1 2012	24' Sylvan Pontoon w/80HP motor & trailer		Purchased new	\$28,500
1 lot	Life jackets, throwables, anchors, safety gear		Brand new 1 demo HR	\$22,000
	On Site Residence			\$1,000
1 1998	HUNT Mobile Home 28 x 60	New roof 2009	Repainted 2011	\$ 32,000

Total Page 1 Docks, Vehicles, Rental boats, house			
Total Page 2 Office, Restaurant Equipment			\$ 2,725,900
Total Page 3 Service tools, equipment			\$ 120,755
Total Page 4 Intangible Assets			\$ 75,855
Grand Total Business Valuation			\$ 1,950,000
	9/11/2013		\$ 4,872,310

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COST APPROACH

Marshall and Swift cost estimate does not include entrepreneurial risk and profit, which is a market derived figure that reflects the amount an entrepreneur is expecting to receive for his or her contribution to the project. It represents a degree of risk and expertise associated with the development of the project. However, subject property is personal property which does not typically require entrepreneurial risk and profit. Therefore, no entrepreneurial risk and profit has been estimated.

Accrued Depreciation:

There are several forms of depreciation typically found affecting the value of improvements which must be analyzed for subject. A discussion of the various forms of depreciation is found on the following page.

Definitions regarding depreciation used in this section are taken from Marshall and Swift publication Section 97 at page 1. Depreciation is loss in value due to any cause. It is the difference between the value of structural improvement or piece of equipment and its reproduction or replacement cost as of the date of valuation. Depreciation is divided into three general categories as found on the following page.

Physical depreciation is loss in value due to physical deterioration.

Functional or technical obsolescence is loss in value due to lack of utility or desirability of part or all of the property, inherent to the improvement or equipment. Thus a new structure or piece of equipment may suffer obsolescence when built.

External, location or economic obsolescence is loss in value due to causes outside the property and independent of it, and is not included in the tables.

Physical Depreciation:

Effective age of a property is its age as compared with other properties performing like functions. It is the actual age, less the age which has been taken off by face-lifting, structural reconstruction, removal of functional inadequacies, modernization of equipment, etc. It is an age which reflects a true remaining life for the property, taking into account the typical life expectancy of buildings or equipment of its class and its usage. It is a matter of judgment, taking all factors, current and those anticipated in the immediate future, into consideration. Determination of effective age on older structures may best be calculated by establishing a remaining life, which subtracted from a typical life expectancy will result in an appropriate effective age with which to work. Effective age can fluctuate year by year or remain somewhat stable in absence of any major renewals or excessive deterioration. Subject has substantial personal property with varying expected lives and at varying points of their useful life. Appraisers have not attempted to estimate the useful life and effective ages of all the personal property. Appraisers have estimated the dockage to have useful life of 30 years and an effective age of 15 years, which indicated physical depreciation at 50.0 percent.

COST APPROACH

Functional/External Obsolescence:

Subject's improvements provide a functional floor plan for a full service marina located in a recreational area. Based on the income capitalization approach presented later in this report it does not appear that subject suffers any additional functional or external obsolescence.

Value is estimated below. Appraisers have estimated the replacement cost new of the dockage system based on Marshall and Swift Cost Estimation Service. The dockage represents approximately 80 percent of the value shown on the concessionaire's asset list. After deducting the value of the dockage, the concessionaire has allocated \$577,510 to the remaining personal property and FF & E. Appraisers have checked the value on the larger valued items and the values were similar to what was provided by the concessionaire. Therefore, appraisers have accepted the values for the remaining personal property and FF & E at \$577,510.

One item not included on the concessionaires list was the value of the liquor license. Appraisers interviewed personnel with the Yankton County Auditor's Office regarding county liquor licenses. Currently there are no licenses available through the county, and have not been for a considerable time. Appraisers were also informed that based on the county population, it is unlikely that there will be any additional liquor license granted to the county in the near future. There have been no transfers of liquor licenses in recent years. Value of liquor license varies considerably from county to county. The restaurant contributes to the value of subject due primarily to the convenience, which includes the liquor license. Appraisers have estimated the value of the liquor license at \$75,000.

VALUE ESTIMATE		
Dockage (411 Slips x \$10,000)		\$4,110,000
PWC Mooring/Dockage (34 x \$1,270)		\$43,180
Gas Dock		\$175,000
Courtesy Dock		\$23,100
Total Dockage RCN		\$4,351,280
Physical Depreciations @ 50%	-	\$2,175,640
Depreciated RCN of Dockage	=	\$2,175,640
Liquor License	+	\$75,000
All other FF & E / Personal Property	+	\$577,510
Total Depreciated RCN of Real Property		\$2,828,150
Land Value (Leasehold)	+	0
Value Indicated	=	\$2,828,150

Rounded to

\$2,830,000

INCOME CAPITALIZATION APPROACH

It has been said that "value is created by the anticipation of future benefits," and the Income Capitalization Approach is a good example of this statement. The Income Capitalization Approach involves the capitalization of the income's "future benefits" of a property by the appropriate rate. To accomplish this, the appraisers must analyze the income potential, quality and quantity of the income stream, deduct the expenses of the property operation, and utilize the proper capitalization technique. A value for the subject property by the Income Capitalization Approach will be estimated, based upon the projected income properly capitalized.

For the appraisers, the Income Capitalization Approach is separated into the following steps:

- Estimate potential gross income
- Subtract allowances for vacancy and credit losses
- Estimate and subtract all operating expenses
- Calculate the net operating income (NOI)
- Select an appropriate capitalization process and derive the capitalization rates based on market analysis
- Apply the selected capitalization process to the estimated net operating income (NOI)
- Reconciliation and value conclusion

Estimate Potential Gross Income:

Current Income:

Subject has been operated as a seasonal restaurant, convenience store and marina. In order to estimate the potential gross income, the appraisers have reviewed the historic income for the property. Appraisers' Reconstructed Operating Statement for the last three years, from operating statements provided, can be found on the following page. It is possible that subject could be operated as a different style of marina or under a different type of ownership entity, which might affect the overall viability of the operation. All of these possibilities require projections of demand, income levels, and operating costs. Subject has been operating as a recreation style restaurant, convenience store and marina for a number of years and this is the style that will likely be continued, and the operating data is available under this criteria. For this reason, the appraisers have relied heavily on this data, but have also compared this to historical data from other marina's that have been appraised over the years. Subject not only has the marina and boat dock traffic, but also benefits from being located in a state park.

Potential Gross Income:

Subject property generates income from six primary sources.

1. Sales from service and repair shop and C-store – Subject property operates a repair and sales shop. There are some sales from water craft, but also repairs on water craft. Within this is the sales generated at the convenience store.

RECONSTRUCTED HISTORICAL OPERATING STATEMENTS

	2012	% EGI	2011	% EGI	2010	% EGI	Average	% EGI/Ave
Potential Gross Income								
Sales (Boat Merch & Service)	\$341,841		\$366,605		\$375,352		\$361,266	
COG's	(\$146,784)	42.94%	(\$142,382)	38.84%	(\$163,393)	43.53%	(\$150,853)	41.76%
Profit	\$195,057	16.36%	\$224,223	21.61%	\$211,959	20.42%	\$210,413	19.32%
Boat Slip Lease	\$688,010	57.71%	\$660,443	63.65%	\$634,160	61.10%	\$660,871	60.67%
Storage Fees	\$68,767	5.77%	\$71,266	6.87%	\$79,245	7.63%	\$73,093	6.71%
Jet Ski Slip Lease	\$17,148	1.44%	\$17,040	1.64%	\$16,800	1.62%	\$16,996	1.56%
Rental Boats	\$110,327	9.25%	\$64,596	6.23%	\$95,770	9.23%	\$90,231	8.28%
Restaurant Sales	\$112,790	9.46%	\$0	0.00%	\$0	0.00%	\$37,597	3.45%
Total PGI	\$1,192,099	100.00%	\$1,037,568	100.00%	\$1,037,934	100.00%	\$1,089,200	100.00%
Expenses								
Advertising	\$926	0.08%	\$0	0.00%	\$158	0.02%	\$361	0.03%
Automobile	\$2,692	0.23%	\$4,294	0.41%	\$4,009	0.39%	\$3,665	0.34%
Bad Debt	\$90	0.01%	\$35,657	3.44%	\$960	0.09%	\$12,236	1.12%
Bank Charges	\$25,432	2.13%	\$26,133	2.52%	\$20,239	1.95%	\$23,935	2.20%
Contributions	\$0	0.00%	\$300	0.03%	\$650	0.06%	\$317	0.03%
Dues & Subscriptions	\$267	0.02%	\$253	0.02%	\$826	0.08%	\$449	0.04%
Equipment Rental	\$668	0.06%	\$740	0.07%	\$2,079	0.20%	\$1,162	0.11%
Freight in	\$1,714	0.14%	\$3,331	0.32%	\$2,872	0.28%	\$2,639	0.24%
Fuel - Shop	\$9,416	0.79%	\$7,758	0.75%	\$8,163	0.79%	\$8,446	0.78%
Insurance	\$97,259	8.16%	\$86,879	8.37%	\$110,612	10.66%	\$98,250	9.02%
Licenses and Permits	\$2,296	0.19%	\$1,099	0.11%	\$2,705	0.26%	\$2,033	0.19%
Miscellaneous	\$375	0.03%	\$1,036	0.10%	\$2,086	0.20%	\$1,166	0.11%
Office Supplies	\$2,025	0.17%	\$1,192	0.11%	\$1,342	0.13%	\$1,520	0.14%
Restaurant Expense	\$131,012	10.99%	\$4,839	0.47%	\$17,005	1.64%	\$50,952	4.68%
Salary (member/management)	\$60,368	5.06%	\$60,563	5.84%	\$61,010	5.88%	\$60,647	5.57%
Salary/Wages - other	\$157,239	13.19%	\$129,992	12.53%	\$142,096	13.69%	\$143,109	13.14%
Payroll Taxes	\$19,289	1.62%	\$16,011	1.54%	\$17,445	1.68%	\$17,582	1.61%
Professional Fees	\$4,760	0.40%	\$4,152	0.40%	\$3,787	0.36%	\$4,233	0.39%
Rent	\$57,459	4.82%	\$75,247	7.25%	\$78,144	7.53%	\$70,283	6.45%
Repairs & Maintenance	\$12,353	1.04%	\$13,913	1.34%	\$35,392	3.41%	\$20,553	1.89%
Supplies	\$15,462	1.30%	\$14,394	1.39%	\$17,834	1.72%	\$15,897	1.46%
Taxes	\$8,583	0.72%	\$4,224	0.41%	\$5,197	0.50%	\$6,001	0.55%
Telephone	\$7,167	0.60%	\$6,583	0.63%	\$5,213	0.50%	\$6,321	0.58%
Utilities	\$30,111	2.53%	\$30,065	2.90%	\$26,825	2.58%	\$29,000	2.66%
Total Expense	\$646,963	54.27%	\$528,655	50.95%	\$566,649	54.59%	\$580,756	53.32%
Net Operating Income	\$545,136	45.73%	\$508,913	49.05%	\$471,285	45.41%	\$508,445	46.68%

INCOME CAPITALIZATION APPROACH

2. Boat Slip Lease – This income is generated from leasing the boat slips and personal watercraft slips. Subject has 411 boat slips and 34 mooring slips for personal water craft. Historical operating statements show a three year range for this income from \$650,960 to \$705,158 with an average of \$677,867.
3. Rental Boats – Subject has 10 rental boats which are leased out on an hourly or daily rate. Historical operating statements show a three year range of this income from \$64,956 to \$110,327 with an average of \$90,231.
4. Restaurant Sales – Subject property operates a restaurant in conjunction with the marina. This is a full service restaurant with food, beer, and liquor. Previously, subject leased the restaurant to another entity, so only 2012 sale were available. 2012 sales were \$112,790.
5. Storage Fee – This income is generated for boat storage over the winter months. Historical operating statements show a three year range of this income from \$68,767 to \$79,245 with an average of \$73,093.

Total potential gross income over the last three years ranged from \$1,037,568 to \$1,192,099. The potential gross income in 2012 was the highest of the last three years due primarily to the inclusion of the restaurant sales. The largest source of income is from the docks/boat slip rental. Concessionaire indicated that the marina currently holds the maximum number of boat slips. He also indicated he had a waiting list of approximately 100 people to lease a slip. Slip renewals are granted to existing lessee's first. Thus, increase in this income would be limited to increasing the rental rate for the slips. Their sale of fuel is included in the first line item of sales and service. It appears that subject is close to maximizing the revenue from subject. While no revenue sources are dependent on each other, they are related. Meaning that the restaurant by itself may not be viable, it does contribute to the ability to lease the boat slips, thus, contributes to the overall economic viability of the property. Appraisers have estimated the potential gross income to remain relatively stable at \$1,200,000.

Estimate and Subtract All Operating Expenses:

Estimate of expenses is based upon the actual expenses from subject and from other properties. Subject shows cost of goods for the last three years at \$146,784, \$142,382, and \$163,393 respectively. Cost of goods sold shows a three year average of approximately 41.76 percent, which is at the upper end of typical cost of goods sold. However, a large portion of this is likely fuel, which would have a lower margin. Operating expenses for the last three years total \$646,963, \$528,655, and \$566,649 respectively. Three year average expense ratio is 53.32 percent. Primary reason for the increase in operating expense appears to be the inclusion of the restaurant expense of \$131,012. Net operating income ratio last year was 45.73 percent with the three year net operating income ratio being 46.68 percent, which is high for similar business operations. A summary of two expense comparables can be found on the following page.

INCOME CAPITALIZATION APPROACH

EXPENSE COMPARABLES						
Year	Angostura Resort				Oahe Marina	
	2011	%	2010	%	2009	%
Sales	\$239,086	98.66%	\$223,399	91.16%	\$552,107	197.83%
Cost of Sales	\$182,353	75.25%	\$166,075	67.77%	\$273,024	97.83%
Gross Profit	\$56,733	23.41%	\$57,324	23.39%	\$279,083	100.00%
Other Operating Revenue	\$185,596	76.59%	\$187,747	76.61%	\$0	0.00%
Total Revenue	\$242,329	100.00%	\$245,071	100.00%	\$279,083	100.00%
Expenses						
Advertising	\$2,756	1.14%	\$3,621	1.48%	\$5,311	1.90%
Cash over/short	\$176	0.07%	\$154	0.06%	\$0	0.00%
Communications	\$6,592	2.72%	\$6,070	2.48%	\$0	0.00%
Credit Card Charges	\$0	0.00%	\$0	0.00%	\$7,115	2.55%
Maintenance and repair	\$18,036	7.44%	\$35,827	14.62%	\$4,522	1.62%
Misc. Expense	\$940	0.39%	\$798	0.33%	\$5,963	2.14%
Payroll	\$66,357	27.38%	\$64,998	26.52%	\$105,687	37.87%
Payroll Taxes	\$15,475	6.39%	\$16,148	6.59%	\$11,914	4.27%
Rent	\$19,487	8.04%	\$21,081	8.60%	\$18,014	6.45%
Supplies	\$1,394	0.58%	\$944	0.39%	\$6,745	2.42%
Utilities	\$36,766	15.17%	\$33,783	13.78%	\$25,282	9.06%
Property Tax & Insurance	\$11,192	4.62%	\$10,140	4.14%	\$1,988	0.71%
Professional fees	\$2,534	1.05%	\$2,530	1.03%	\$8,063	2.89%
Auto/Meals/Ent	\$1,961	0.81%	\$2,141	0.87%	\$4,606	1.65%
Total Expense	\$183,666	75.79%	\$198,235	80.89%	\$205,210	73.53%
NOI	\$58,663	24.21%	\$46,836	19.11%	\$73,873	26.47%

Subject property's net income ratio is better than either of the comparables. Certainly some difference is expected as most marinas offer a different combination of services and thus would experience different expense. Secondly, the location and demand can play a large role in the amount of income generated. Subject property has a desirable location which is a regional draw for recreation use. Subject is superior to both expense comparables, for this reason a net income ratio is expected to be higher.

INCOME CAPITALIZATION APPROACH

As best the appraisers can determine, the expense comparable data includes expense for short life items as they occur, but no actual reserve for replacement for either short or long life items. This is much in the same manner as subject currently operates. Therefore, in effect the expense category does account for some level of reserve for replacement. It is assumed that the historical numbers include at least some level of salary for the owner. For this analysis, the appraisers have not adjusted the payroll expense for any additional owner compensation. Subject should perform near the expense level as it has in the past. Appraisers have increased the 2012 expenses by 5.0 percent to reflect some higher costs. Total operating expense is estimated at \$679,311. This leaves net operating income of \$520,689 to be capitalized into an indication of value.

Calculation of Net Operating Income:

Appraiser's Proforma Operating Statement can be found on the following page.

Select Appropriate Capitalization Process:

Many different capitalization methods and techniques are available to process anticipated future income into a present worth estimate. The method used depends primarily on the characteristics of the forecasted income stream itself. Each technique incorporates specific assumptions about the character of that income stream, the form of the appropriate rate of return or discount rate, and the time period involved. Appraisers cannot properly select the appropriate technique without being aware of these underlying assumptions. Capitalization technique must correspond to and describe the income, rate, and time characteristics of the appraisal problem present by the subject property. Only then can the appraisal reflect the appraisers' best analytical judgment applied to pertinent and relevant facts of the market.

Every capitalization method or technique therefore, requires inputs of amount of time, time of receipt, and rate of yield. Role of discounting and compound interest is to develop the proper factor(s) in terms of rate and time, which are then used in processing the income to a present worth estimate. Based upon the type of income flow and the method used in the market, the appraisers have selected capitalization using direct capitalization by overall rate.

Application of the Capitalization Process:

Direct Capitalization by Overall Rate:

Appraisers have analyzed the purchase of the Oahe Marina and found a going concern capitalization rate of 19.08 percent. In that analysis the appraisers have made further analysis of the capitalization rate itself. Appraisers' analysis assumed a 12.0 percent rate of return for the real estate portion of the sale, which developed a 40.6 percent rate of return for the FF&E portion of subject. This would appear to be fairly strong, even for short lived items. Typically, the rate of return is around 20.0 to 24.0 percent, which is based on the idea that short lived items need return of the cost of the item in 8 to 10 years, so a return of 10.0 to 12.0 percent per year, plus a return on the investment in that item of 8.0 to 12.0 percent, producing a range of 20.0 to 24.0 percent. This sale would show twice that rate. This may be a reflection of greater risk for seasonal property, or that it is on leased land, or potential for limited resale market for the operation, or that these historical numbers maybe include full compensation to the owner so that the rate includes a return to the owner. Ultimately though, the overall capitalization rate was 19.08 percent.

APPRAISERS PROFORMA OPERATING STATEMENT

Potential Gross Income		% EGI
Sales (Boat Merch & Service)	\$342,000	
COG's	-\$147,000	42.98%
Profit	\$195,000	16.25%
Boat Slip Lease	\$692,000	57.67%
Storage Fees	\$70,000	5.83%
Jet Ski Slip Lease	\$18,000	1.50%
Rental Boats	\$110,000	9.17%
Restaurant Sales	\$115,000	9.58%
Total PGI	\$1,200,000	100.00%
Expenses		
Advertising	\$972	0.08%
Automobile	\$2,827	0.24%
Bad Debt	\$95	0.01%
Bank Charges	\$26,704	2.23%
Dues & Subscriptions	\$280	0.02%
Equipment Rental	\$701	0.06%
Freight in	\$1,800	0.15%
Fuel - Shop	\$9,887	0.82%
Insurance	\$102,122	8.51%
Licenses and Permits	\$2,411	0.20%
Miscellaneous	\$394	0.03%
Office Supplies	\$2,126	0.18%
Restaurant Expense	\$137,563	11.46%
Salary (member/management)	\$63,386	5.28%
Salary/Wages - other	\$165,101	13.76%
Payroll Taxes	\$20,253	1.69%
Professional Fees	\$4,998	0.42%
Rent	\$60,332	5.03%
Repairs & Maintenance	\$12,971	1.08%
Supplies	\$16,235	1.35%
Taxes	\$9,012	0.75%
Telephone	\$7,525	0.63%
Utilities	\$31,617	2.63%
Total Expense	\$679,311	56.61%
Net Operating Income	\$520,689	43.39%

INCOME CAPITALIZATION APPROACH

The second similar capitalization rate the appraisers were able to abstract was a pending sale of 1970's marina and campground in Lindstrom, Minnesota. This property is listed for \$1,250,000 and currently has purchase agreement out for review at approximately \$1,050,000. However, this property has a 3,200 square foot lake frontage single-family home on site valued at \$450,000 by the listing broker. If the value of the home is removed from the purchase price this indicates the values for the income producing portion of the property to \$800,000 and \$600,000 respectively. Based on last year's income of \$130,000, which according to the broker is near stabilized, with some room for growth, would indicate going concern capitalization rates of 16.25 percent to 21.67 percent. The capitalization rate at 21.67 percent is more relevant as it is based on an actual offer. This sale would also include the underlying fee interest in the land.

Appraisers do not have any other recent sales of similar business going concerns to develop additional capitalization rates. However, the appraisers have compared to capitalization rates from other going concern business operations, such as campgrounds. Appraisers have developed business capitalization rates on seven campgrounds in the Black Hills with sale dates in 2003 to 2004, which show range of capitalization rates of 11.0 percent to 14.09 percent. These operations would include fee ownership of the underlying land and would have substantially less FF&E than subject.

Subject has average quality seasonal improvements with good appeal located in a state park. Furthermore, Lewis and Clark Lake is the largest lake in the area and considered to be a regional draw. However, the historical income and expenses for the subject property would reflect these considerations and suggest a fairly reliable stabilized income projection for the existing operation. Appraisers analysis of the potential operation income indicates that subject is operating at a relatively high occupancy rate, so there may be potential for increasing rents on the boat slips; however, subject is at maximum capacity. Methods utilized to estimate the potential income and expenses for subject are based on the concept of reduction of risk and typical management.

Another important distinction to make between subject property and other going concern businesses is that subject is located on leased land with the typical concessionaire's lease having a term of 10 years. Furthermore, personal property and FF & E typically have shorter economic lives so needs to be repaid quicker than real estate. Therefore, there is a limited guaranteed window of 10 years to recoup the cost of the investments as well as a return on the investment, although the entire investment does not need to be recouped in 10 years as there is still property to sell at the end of the lease. This would include the floating dockage, which has a longer useful life than most personal property. In theory this would indicate a higher capitalization rate for subject. However, there is also potential that a lessee could potentially be awarded a second or third term. For purpose of this analysis, appraisers have estimated the typical holding period for the property to be 10 years.

For these reasons, the appraisers have selected an overall capitalization rate consistent with the previous sale, at 18.0 to 19.0 percent for the subject property.

INCOME CAPITALIZATION APPROACH

Value for the subject property is developed as follows:

$$\begin{aligned} \text{Net Income} \div \text{Overall Rate} &= \text{Value} \\ \$520,689 \div 0.18 &= \$2,892,717 \\ \$520,689 \div 0.19 &= \$2,740,468 \end{aligned}$$

Capitalization method relied upon develops a value indication range from \$2,740,468 to \$2,892,717 for the subject property. The market derived overall rates vary, depending on the quality of the property, the expectations of changes in future income and the financing at that time, and correlated to subject. Based on the analysis of the income, expenses, and the capitalization methods relied upon, it is the judgment of the appraisers that the data indicates a value by the Income Capitalization Approach of \$2,800,000.

RECONCILIATION AND FINAL ESTIMATE OF MARKET VALUE

Correlation of the data and the indicated value estimate is the final step in the appraisal process. Sufficient data has been assembled and analyzed for the purpose of judging the reactions of typical purchasers in the market place. Purpose of the appraisal was to estimate lease hold interest market value, and to that end the data was studied and processed by use of two of the three approaches to value. Value estimates indicated are as follows:

Cost Approach	\$2,830,000
Income Capitalization Approach	\$2,800,000
Sales Comparison Approach	N/A

In the correlation process, the greatest weight should be given to that approach to value most commonly used by typical purchasers for the type of property being appraised. Consideration is given to that approach to value in which the appraisers have the highest degree of confidence and has been processed with a minimum of assumptions. Also important is the reasonableness of the data and the reliability of that data. In consideration of the above, and for the reasons and conclusions contained in this report, majority of the weight is given to the Income Capitalization Approach, with secondary weight given to the Cost Approach. It is the opinion of the appraisers that the "as is" lease hold interest market value of the subject property located at SD Highway 52 in Yankton, South Dakota as of September 11, 2013 was \$2,800,000.

Personal Property, FF & E, and Intangible Assets:

Subject property's leasehold value is considered to be all in personal property and FF & E. Concessionaire has made improvements to the convenience store, small shop, and added concrete to the site. However, concessionaire did not have approval from the State to make these improvements, thus was not granted a possessory interest in them in accordance with the lease agreement and Article 41:13 regarding concession leases. Article 41:13 can be found in the Addenda as Exhibit 5. All other maintenance and improvements made over the term of the lease are considered to be necessary maintenance to the property and required for operation of the business.

The income generates approximately enough value to cover the depreciated replacement cost new of the improvements. However, since there is no value above the replacement cost, there is no intangible or "blue sky" value in the business.

**APPRAISER QUALIFICATIONS
STEVEN C. SHAYKETT, MAI**

EDUCATION:

College: B.S. Degree, University of South Dakota, 1975

Appraisal Education: Completed required 165 hours of educational instruction, appraisal experience and comprehensive examination to be awarded Member Appraisal Institute (MAI) from the Appraisal Institute in May 1981.

Continuing Education: Complete listing found at the end of this section

SPECIALIZED EDUCATION:

- Successfully completed the Valuation of Conservation Easements Certificate Program
- Successfully completed the Appraisal Institute's Fundamentals of Separating Real Property, Personal Property and Intangible Business Assets Course for Small Business Administration (SBA) Appraisals

ASSOCIATION MEMBERSHIP:

Appraisal Institute

- MAI Member #6249
- North Star Chapter President 2012

State Certified General Appraiser

- State of South Dakota (#155CG-2014)
- State of Iowa (#CG01446)
- State of Minnesota (#20100995)

Licensed Real Estate Broker - State of South Dakota

Member - Professional Appraisers Association of South Dakota

Appraisers Advisory Council Member - South Dakota Appraisers Certification Program - 1989 to 2001

EXPERIENCE:

Mr. Shaykett has been owner of Shaykett Appraisal Company, Inc. since 1979, which was located in Prairie Village, Kansas from August 1979 to June 1984, and since June 1984 in Sioux Falls, South Dakota. Mr. Shaykett was also a partner in the firm of Shaykett Agency in Miller, South Dakota from August 1979 to June 1984, when the two offices were consolidated.

Mr. Shaykett has been qualified as an expert valuation witness in a number of County Courts in South Dakota, as well as Johnson County, Kansas; Cass County, Missouri; and in Federal District Court, Western Division of Missouri.

**APPRAISER QUALIFICATIONS
STEVEN C. SHAYKETT, MAI**

From May 1975 to August 1979, Mr. Shaykett was an associate appraiser with Appraisal Associates of Kansas City, Missouri. Appraisal assignments completed by the appraiser during that employment include rural, urban fringe and commercial properties, as well as a number of special use properties in the Kansas City Metro Area and throughout Missouri and Kansas. From May 1971 to May 1975, Mr. Shaykett was associated on a part-time basis with Shaykett Agency in Miller, South Dakota. During this time, the appraiser assisted in real estate sales and management, and appraisal work throughout South Dakota.

Principal clients served include private industry, banks and attorneys, including US Bank, Wells Fargo Bank, Home Federal Savings Bank, First National Bank, First Premier Bank, CorTrust Bank, First Midwest Bank - Deerfield Branch, Marquette Bank, Citicorp, Security Bank, Frontier Bank, Security National Bank, and Firststar of Sioux City. Governmental agencies served include the Department of Justice; U.S. Corps of Engineers; South Dakota Department of Transportation; City of Sioux Falls; City of Yankton; City of Mitchell; City of Kansas City, Missouri; Federal Aviation Administration; Department of Energy; Federal Deposit Insurance Corporation; U.S. Forest Service; City of Independence, Missouri; and the City of Maryville, Missouri.

Mr. Shaykett has been involved in the appraisal of a number of rock mining operations, including the Carthage Marble Mining and Storage Operation in Carthage, Missouri; Alrok Quarries and Underground Development in Kansas City, Missouri. Other specialty assignments include North American University, National Foods 1.2 million bird egg laying facility, Nor-Am Cold Storage, Western Mall, Kmart, other large retail, daycare centers, assisted living centers, nursing homes, country clubs, churches, mobile home parks, hotels and motels. General assignments have included the appraisal of grain facilities, wildlife hunting clubs, fast food restaurants, industrial properties, office buildings, apartment projects, commercial properties, multi-family developments, and valuation of full and partial acquisition for detention basins for flood control. Appraisals for leasehold value have also been completed.

Rural properties appraised include farms in South Dakota, North Dakota, Montana, Nebraska, Kansas and Missouri. Mr. Shaykett has completed many appraisal assignments for full or partial acquisition for flowage easement or conservation easements.

Mr. Shaykett has completed multiple tract appraisal projects. During late 1979 and early 1980, Mr. Shaykett was one of two appraisers hired by the Department of Energy to appraise 260 farm tracts for right-of-way acquisition for a 230 KV transmission line in Montana and South Dakota. In 1983, Mr. Shaykett completed 38 farm appraisals for acquisition for the 3,000 acre Mozingo Creek Watershed Project. Also completed are a number of multi-tract appraisal projects for street widening and detention basins.

As of the date of this appraisal, Steven C. Shaykett has completed the requirements of the Continuing Education Program of the Appraisal Institute.

**APPRAISER QUALIFICATIONS
STEVEN C. SHAYKETT, MAI**

CONTINUING EDUCATION - Since 2008:

<u>DATE</u>	<u>COURSE DESCRIPTION</u>
01-2008	USPAP Update
06-2008	Your Promise of Professionalism - The Code of Ethics
09-2008	Valuation of Conservation Easements
12-2008	Appraising Convenience Stores
01-2009	Training Course for Supervising Appraisers
08-2009	Residential Writing Report
11-2009	Responsible Broker Course
01-2010	USPAP 7 Hour Course Update
05-2011	Critical Rules
05-2011	13 th Annual Real Estate Trends Seminar
06-2011	Residential Report Writing: More Than Forms
06-2011	Understanding the Uniform Mortgage Data Program and the Uniform Appraisal Data Set
08-2011	Appraising the Appraisal: Appraisal Review - General
10-2011	Multi-Family Housing
01-2012	A New Economy: A Guide for Real Estate Professionals
02-2012	15 Hour National Uniform Standards of Professional Appraisal Practice
03-2012	A Walk Through the Minnesota Property Tax System
04-2012	Fundamentals of Separating Real Property, Personal Property and Intangible Business
05-2012	Social Media
05-2012	14 th Annual Real Estate Trends Seminar
06-2012	7 Hour National USPAP Equivalent Course

**APPRAISER QUALIFICATIONS
SCOTT S. ELWOOD, MAI**

EDUCATION

College: B.A. Degree, University of South Dakota, 2001
-Business Administration

Appraisal Education: Completed 310 hours of educational instruction and comprehensive examination to be South Dakota State Certified General Appraiser, as well as additional education, testing, and demonstration of knowledge to be awarded Member Appraisal Institute (MAI) from the Appraisal Institute in April 2013. Classes taken and passed by Mr. Elwood are listed below under the heading for which license they were required. All qualifying education classes were taken through the Appraisal Institute.

State Registered Classes and Exams:

Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour National USPAP	15 Hours

State Certified General Classes and Exams:

General Market Analysis and Highest and Best Use	30 Hours
Real Estate Finance Statistics and Valuation Modeling	15 Hours
General Appraisers Sales Comparison Approach	30 Hours
General Appraisers Site Valuation and Cost Approach	30 Hours
General Appraisers Income Capitalization Approach Part I & II	60 Hours
General Appraisers Report Writing and Case Studies	30 Hours
Advanced Income Capitalization Approach	40 Hours

Continuing and Additional Education:

7-Hour National USPAP Update	7 Hours
Appraising the Appraisal- Appraisal Review-Residential	7 Hours
Advanced Concepts and Case Studies	40 Hours
Advanced Market Analysis and H&BU	35 Hours
Business Practices and Ethics	7 Hours

ASSOCIATION MEMBERSHIP:

State Certified General Appraiser - State of South Dakota (#1063CG-2014)
- State of Minnesota (#40217763)
- State of Iowa (#CG03210)

Member - - Appraisal Institute - #496954

**APPRAISER QUALIFICATIONS
SCOTT S. ELWOOD, MAI**

EXPERIENCE

From March 2007 to July 2007, Mr. Elwood was employed at Shaykett Appraisal Company, Inc. as a research analyst. During this time, Mr. Elwood assisted in the research of market data, sales data, and rental data. Appraisal assignments performed during employment at Shaykett Appraisal Company, Inc. include commercial properties, retail properties, office properties, industrial properties, multi-family properties, vacant land, residential properties, special use properties, new construction, condemnation work, and subdivision development projects throughout the State of South Dakota as well as southwest Minnesota and northwest Iowa.

While working as a research assistant, Mr. Elwood received his primary education through the Appraisal Institute and received his state registered license in July 2007. Mr. Elwood became a State Certified General Appraiser in March of 2010 and received his MAI designation in April of 2013. Mr. Elwood remains employed at Shaykett Appraisal Company, Inc.

As of the date of this appraisal, Scott S. Elwood has completed the requirements of the Continuing Education Program of the Appraisal Institute.

Shaykett Appraisal Company, Inc.

601 N. Minnesota Avenue, Suite 100
Sioux Falls, South Dakota 57104-8413
Phone (605) 332-3553 • Fax (605) 332-0243
Email: shaykettappraisal@shaykettappraisal.com

Kyle J. Martin
State Certified General Appraiser

Steven C. Shaykett, MAI
State Certified General Appraiser

Scott S. Elwood, MAI
State Certified General Appraiser

Travis E. Shaykett
State Registered Appraiser

Jeffrey A. Ballard
State Registered Appraiser

George P. Stavrenos
State Registered

February 3, 2014

State of South Dakota Department of Game, Fish and Parks
As well as the Concessionaire
Attn: Mr. Doug Hofer
523 East Capitol Avenue
Pierre, South Dakota 57501

RE: Addendum to the Following Appraisal Report:
Self-Contained Appraisal Report of the
The State of South Dakota Property
Improved with Full Service Marina
Commonly Known as Lewis and Clark Marina
Located on SD Highway 52
Yankton, South Dakota
Original Control #13-196
Control #13-196R

Dear Mr. Hofer:

In accordance with your request, we have prepared an Addendum to the above referenced appraisal having a date of value of September 11, 2013 and an appraisal date of October 7, 2013. Purpose of this Addendum is to limit the scope of work for this assignment to the Cost Approach only, as well as to reflect any change in value due to changes in the asset list provided by the concessionaire. However, the original appraisal remains unchanged by this Addendum, unless specifically stated in this Addendum. Scope of work for this Addendum is limited to utilization of the Cost Approach per your request. This Addendum is covered by all assumptions, limiting conditions, statements, and conclusions stated in the original appraisal, unless expressly changed within this Addendum. Appraisal has been made in conformity with generally accepted appraisal practices in accordance to the Uniform Standards of Professional Appraisal Practice (USPAP) and the State of South Dakota Department of Game, Fish and Parks, as well as the Concessionaire Appraisal Guidelines provided by the client.

This Addendum is to be made a part of, and is only to be utilized in conjunction with, a complete copy of the original appraisal report. If used in any other manner, Addendum is null and void and would have no effect.

Purpose of this appraisal Addendum is to estimate the "as is" leasehold interest going concern market value of the subject property as of the original date of value of September 11, 2013.

DESCRIPTION OF THE IMPROVEMENTS:

Appraisers have been provided with a copy of an updated asset list summary which can be found as an attachment. The new asset list increased the boat slips from 411 to 412, increased the PWC mooring pads from 34 to 58, and also changed the service and office equipment totals. A summary of the cost differences is shown below:

Changes in Bill of Sale Items			
	Initial	Current	Difference
Dockage	\$2,345,000	\$2,388,112	\$43,112
Office FF&E	\$120,755	\$136,755	\$16,000
Service Tools & Equipment	\$75,855	\$75,855	\$0
Vehicles, Boats & MH	\$380,900	\$368,400	-\$12,500
Intangible Assets	\$1,950,000	\$142,911	-\$1,807,089
Total	\$4,872,510	\$3,112,033	-\$1,760,477
Without Intangibles	\$2,922,510	\$2,969,122	\$46,612

Concessionaire indicated that 50 of the boat slips have been installed since 2006, which is 12.14 percent of the total boat slips. Concessionaire also indicated that the fuel dock had new fuel lines, dispenser, and leak detection system installed in 2012. In the original report the physical depreciation of all dockage was estimated at 50.0 percent based on a weighted average. It is reasonable that due to the number of new slips the depreciation would be slightly less. For this reason, the physical depreciation of the dockage is lowered to 47.0 percent.

COST APPROACH:

Changes to the Cost Approach include the reduction in physical depreciation of the dockage from 50.0 percent to 47.0 percent, the change in office FF&E and vehicle, boats and mobile home cost of plus \$3,500, and the addition of one boat slip and 24 PWC mooring pads and the associated dock at \$28,000. Value estimated by the Cost Approach is shown on the following page.

VALUE ESTIMATE		
Dockage (412 Slips x \$10,000)		\$4,120,000
PWC Mooring/Dockage (58 x \$1,270)		\$73,660
PWC Dock Head		\$28,000
Gas Dock		\$175,000
Courtesy Dock		\$23,100
Total Dockage RCN		\$4,419,760
Physical Depreciations @ 47%	-	\$2,077,287
Depreciated RCN of Dockage	=	\$2,342,473
Liquor License	+	\$75,000
All other FF & E / Personal Property	+	\$581,010
Total Depreciated RCN of Real Property		\$2,998,483
Land Value (Leasehold)	+	\$0
Value Indicated	=	\$2,998,483
Rounded		\$3,000,000

RECONCILIATION AND FINAL ESTIMATE OF MARKET VALUE:

Value estimated in the original report by the Cost Approach was \$2,830,000. However, due to the changes in the property this has been adjusted by the Addendum to \$3,000,000. Per the client's request, the Income Capitalization Approach has not been considered. It is the opinion of the appraisers that the "as is" leasehold interest going concern market value of the subject property located on SD Highway 52 near Yankton, South Dakota as of September 11, 2013 was \$3,000,000.

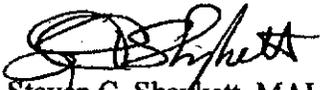
February 3, 2014

Mr. Hofer

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Thank you for this opportunity to provide appraisal services. Please contact us if you have any questions or require additional information.

Respectfully submitted,



Steven C. Shykett, MAI
State Certified General Appraiser
No. 155CG-2014



Scott S. Elwood, MAI
State Certified General Appraiser
No. 1063CG-2014

SCS/cw

Attachments:

Bill of Sale

Engagement Letter

Appraisers' Licenses

EXHIBIT C
SETTLEMENT AGREEMENT
LEWIS AND CLARK MARINA
"INTANGIBLE LISTING"

The following is a list of intangible items relative to the operation of Lewis and Clark Marina which shall be transferred and provided to the successor concessionaire in accordance with Sections 2 and 3 of the Settlement Agreement:

- All trademark, copyrights and other rights and title to the name "Lewis and Clark Marina".
- Rights to the website domain "<http://lewisandclarkmarina.com>"
- All phone numbers currently listed for the marina will remain with the marina after lease transfer
- All original copies of current slip and storage leases and associated lessee contact information
- All marina slip and storage fee deposits collected in advance for future seasons
- Marina slip waiting list and all associated customer contact information
- All outstanding Service Department works orders to include customer name and contact information, date order was received, type of repair requested, status of repair or parts ordered.

**CONCESSION AGREEMENT
LEWIS AND CLARK RECREATION AREA**

This Concession Agreement is made and entered into on _____ ("Effective Date") by and between the South Dakota Department of Game, Fish and Parks ("Department") 523 East Capitol, Pierre South Dakota 57501, and _____ ("Concessionaire") ADDRESS. This Agreement is subject to and governed by the requirements of ARSD Article 41:13 subtitled Park Concession Leases effective October 17, 2005, (the "Rules") and is subject to all terms and conditions of Lease No. DACW45-1-02-6008 between the Department and the Secretary of the Army copies of both of which have been provided to the Concessionaire.

WITNESSETH

Whereas, Lewis and Clark Recreation Area is administered by the Department for providing park and related services, tourism, and resource management; and

Whereas, the Department desires to have a limited and prescribed portion and area of Lewis and Clark Recreation Area operated by a concessionaire as a marina open to the general public; and

Whereas, the Department chooses to commercially operate the area through a private concessionaire to provide services to the general public; and

Whereas, the Department has provided grounds and facilities of the area, and desires a private concessionaire to operate the same; and

Whereas, the Commission has promulgated the Rules relating to concession leases under which certain powers and authority to enter into concession leases and agreements have been delegated to the Department; and

Whereas, Concessionaire desires to enter into a concession agreement with the Department to operate a marina concession in portions of Lewis and Clark Recreation Area and be a concessionaire, as defined in the Rules.

Now therefore, for the purposes of carrying out concession operations in designated portions of the Lewis and Clark Recreation Area pursuant to the terms and conditions of this Agreement, the parties agree as follows:

Section 1. Term of Agreement

- (a) This Agreement shall be for a term of ten (10) years, commencing on the effective date, and ending on December 31, 2024.

Section 2. Definitions

- (a) "Agreement" means this Concession Agreement, and all its amendments, addendums, exhibits, attachments, and all documents executed for the purpose of ensuring Concessionaire's performance of this Concession Agreement.
- (b) "Commission" means the South Dakota Game, Fish and Parks Commission.
- (c) "Concessionaire" means as defined under ARSD 41:13:01.
- (d) "Concessionaire Facilities" means as defined under ARSD 41:13:01.
- (e) "Department" means the South Dakota Department of Game, Fish and Parks.
- (f) "Division" means the Division of Parks and Recreation, a division of the Department of Game, Fish and Parks responsible for the administration of the state park system, including Lewis and Clark Recreation Area.
- (g) "Director" means the Director of the Division of Parks and Recreation, acting on behalf of the Secretary of the Department of Game, Fish and Parks, and his or her duly authorized representatives.
- (h) "Fair Market Value" means as defined under ARSD 41:13:01.
- (i) "Government Facilities" means as defined under ARSD 41:13:01
- (j) "Gross Receipts" means all revenue received, to be received, or realized by Concessionaire from all sales for cash or credit, of services, accommodations, materials and other merchandise made pursuant to the rights granted under this Agreement, Gross Receipts of SubConcessionaires, commissions earned on leases or agreements with other persons or companies operating in the Marina, and revenue earned from sales through electronic media, mail order or otherwise. Concessionaire shall report all of its revenues to the Department without allowances, exclusions or deductions of any kind. For purposes of calculating franchise fees and other fees and reserve amounts identified in this agreement, revenue received from park entrance license sales, and hunting and fishing license sales (excluding agent fees), will be excluded from Gross Receipts.

- (k) "Gross Receipts of SubConcessionaires" means all revenue received, to be received, or realized by SubConcessionaires from all sales for cash or credit, of services, accommodations, materials and other merchandise made as a result of the exercise of the rights conferred by a lease, license or agreement between the Concessionaire and a SubConcessionaire at the Marina, revenues of SubConcessionaires, commissions earned on leases or agreements between SubConcessionaires and other persons or companies operating in the Marina, and revenue earned from sales through electronic media, mail order or otherwise. A SubConcessionaire shall report all of its revenues to the Concessionaire without allowances, exclusions or deductions of any kind or nature.
- (l) "Park" means the property within the boundaries of Lewis and Clark Recreation Area.
- (m) "Personal Property" means as defined in ARSD 41:13:01.
- (n) "Possessory Interest" means as defined in ARSD 41:13:01.
- (o) "Qualified Appraiser" means as defined in ARSD 41:13:01.
- (p) "Marina" means the geographic area as set forth in Exhibit A-1 that includes Government Facilities and Concessionaire Facilities assigned to the Concessionaire as set forth in Exhibit A-2 and A-3, and the operation thereof as permitted under this Agreement.
- (q) "SubConcessionaire" means a third party that, with the approval of the Director, has been granted rights by Concessionaire to operate under a concession lease, license or agreement (or any portion thereof) between Concessionaire and a third party, or between a SubConcessionaire and a third party, whether in consideration of a percentage of revenues or otherwise.
- (r) "Park Supervisor" means the manager of Lewis and Clark Recreation Area or his or her duly authorized representatives.

Section 3. Accommodations, Facilities and Services

- (a) Concessionaire shall provide the following accommodations, facilities, and services within the Marina, subject to the Performance Standards for the Operation and Maintenance of Lewis and Clark Recreation Area Marina attached to the Agreement as Exhibit B.

Minimum Required Accommodations, Facilities and Services

1. A minimum of 400 boat slips for seasonal rental.
2. A minimum of 61 Personal Watercraft docks for seasonal rental
3. All rental slips must have water and security services. At least 80 percent of boat slips must have electrical service
4. A minimum of 4 slips for overnight boat dockage rental.
5. 4 free public use courtesy slips for hourly day time use.
6. On the water marina fuel sales
7. Operation of a marina sanitary pump out station at no cost to users.
8. A flashing beacon at the mouth of the marina basin and red and green channel marking lights,
9. Covered slip storage for the one Department law enforcement boat and open slip storage for one Department owned service boat at no charge to the Department.
10. Boat rental and basic operating instruction
11. Boat, motor and trailer repair and service.
12. Marina store including curios, souvenirs and boating, fishing supplies and accessories.
13. Trailer storage and off-season boat storage.
14. Restaurant food service.
15. Wireless telecommunication service in the Marina

- (b) The Department authorizes the Concessionaire to provide only the following additional accommodations, facilities and services within the Marina. The Department retains the right to approve in writing these or any other additional services contemplated by the Concessionaire prior to the services being offered.

Additional Authorized Accommodations, Facilities and Services:

1. Boat, motor and boat trailer sales and brokerage.
2. Licensed off-sale beer sales between 7:00 a.m. and 11:00 p.m.
3. Licensed on-sale wine and liquor sales at the Restaurant.
4. Meeting room service.
5. Houseboat rental,
6. Boat slip TV hookup
7. Sailing instruction,
8. Tour boat service.
9. Hunting and fishing license sales
10. Boat tow service

- (c) The Department retains the right to authorize additional accommodations, facilities, services and merchandise within the Marina. The Department shall give the Concessionaire first opportunity to provide such additional accommodations, facilities, services and merchandise. If Concessionaire does not desire to provide such additional accommodations, facilities, services and merchandise, or if the Department and Concessionaire are unable

to agree upon the terms under which Concessionaire would provide such additional accommodations, facilities, services and merchandise, the Department shall be entitled to contract with a third party to provide said additional accommodations, facilities, services and merchandise within the Park under terms acceptable to the Department.

- (d) The Department reserves the right to establish reasonable standards as to the nature, type and quality of Concessionaire's services and merchandise. The Department retains the right to disapprove types of services and merchandise that do not meet these standards.

Section 4. Rates and Quality Control

- (a) All rates, fees and prices charged the public by Concessionaire must be reasonable and comparable to the fees, rates and charges charged for similar accommodations, facilities, services and merchandise in the region or outside the region if similar accommodations, facilities, services and merchandise are not provided in the region. Concessionaire shall clearly post or mark all rates and prices for accommodations, facilities, services and merchandise.
- (b) The Department reserves the right to establish reasonable standards as to the nature, type and quality of the Concessionaire's accommodations, facilities, services and merchandise. All accommodations, facilities, services and merchandise sold are subject to the rules and laws of the State of South Dakota and the United States.

Section 5. Capital Development and Improvements

- (a) Concessionaire, with prior written approval of the Director, may construct, modify or install at its cost such fixtures, structures, or improvements to Government Facilities or Concessionaire Facilities necessary for the operations required or authorized hereunder, subject to the Possessory Interest (and extent thereof) as authorized by ARSD 41:13. Concessionaire shall acquire no Possessory Interest to any fixtures, structures, and improvements made to Government Facilities or Concessionaire Facilities without the written approval of the Director. Requests shall be made in writing to the Department in sufficient detail to determine the scope, financing and scheduling of the proposed project. Drawings, maps or illustrations shall accompany the written request which accurately describe the location and design of all proposed fixtures,

structures and improvements and affected areas. All requests must address the requirements of the Americans with Disabilities Act.

Unless otherwise agreed upon by the parties in advance, professionally developed design and construction plans for each project contemplated and requested by Concessionaire, prepared by architects, engineers and/or contractors, shall be submitted to the Director for approval. No construction, modification, or installation of fixtures, structures and improvements shall commence without receipt of written approval from the Director. Once approved, Concessionaire shall make no changes or alterations to the construction plans except upon the Director's written approval. Concessionaire agrees that any review or approval by the Director of Concessionaire's construction plans is solely for the benefit of the Department, and without any representation, warranty or liability whatsoever to Concessionaire or any other person with respect to the adequacy, correctness or sufficiency thereof or any compliance with all local, state and federal laws, regulations and building codes, or otherwise. All designs and construction of the fixtures, structures and improvements shall be in compliance with all local, state and federal laws, regulations and building codes. The Director may require plans to be prepared, approved and signed off by a professional licensed architect and/or engineer for a proposed project.

Upon completion of approved projects, Exhibit A shall be amended to include the additions and value of Possessory Interest associated with the fixtures, structures and improvements.

- (b) In addition to any rights and remedies afforded to the Department for breach of this Agreement, the construction of any unauthorized fixtures, structures and improvements to or of Concessionaire Facilities and/or Government Facilities, at the discretion of the Department, must either be:
 - (i) restored to their original condition at the expense of Concessionaire, or
 - (ii) become Government Facilities with no Possessory Interest compensation paid to Concessionaire.

- (c) Activities involving any ground disturbance, placement of fill material, prescribed burning of vegetation or tree removal shall require prior written approval from the Department. Any requests for these activities shall be made to the Department in writing in sufficient detail to determine the scope and schedule of the proposed project. Drawings, maps or illustrations accurately describing the location of these activities shall accompany the

written request. All activities involving any ground disturbance, placement of fill material, prescribed burning of vegetation or tree removal shall be completed in compliance with all local, state and federal laws and regulations.

- (d) In the event that Concessionaire constructs fixtures, structures or improvements to Concessionaire Facilities or Government Facilities, Concessionaire shall be responsible for securing all necessary licenses and permits required under local, state and federal laws and regulations.
- (e) All construction activities must meet or exceed existing levels of craftsmanship. No Department owned resources or materials from the Park shall be used in any project, except by written consent of the Department.
- (f) Concessionaire shall not cause, permit or suffer any lien or encumbrance to attach to the Marina, the Concessionaire Facilities or Government Facilities, except for capital development improvements to Concessionaire Facilities as outlined in Section 5. If Concessionaire shall cause, permit or suffer a lien or encumbrance to attach, Concessionaire shall cause the same to be cancelled and discharged of record by bond or otherwise as allowed by law at the expense of Concessionaire within thirty (30) days after the filing thereof. Concessionaire shall defend on behalf of the Department, at Concessionaire's sole cost and expense, any action, suit or proceeding which may be brought thereon for the enforcement of such lien or encumbrance. Concessionaire shall pay any damages, including payment of any legal expenses incurred by the Department for doing the same in the event Concessionaire fails to obtain cancellation or discharge of the lien or encumbrance, fails to satisfy and discharge any judgment entered thereon and/or fails to save the Department harmless from any claim or damage resulting therefrom.

Section 6. Facilities

- (a) The Department hereby assigns for use by Concessionaire, the Government Facilities identified in Exhibit A-3, located within the Marina as identified in Exhibit A-1. The Department also assigns to Concessionaire the Concessionaire Facilities set forth in Exhibit A-2
- (b) Concessionaire has inspected the Concessionaire Facilities and Government Facilities identified in Exhibit A-2 and A-3, is thoroughly aware of their condition, and accepts them and other items in an "as is" condition.

- (c) The Department reserves the right to withdraw or expand the land, Government Facilities and/or Concessionaire Facilities located within the Marina during the term of this Agreement for the purposes of protecting the Park and its visitors, and/or to restrict or provide additional accommodations, facilities, services and/or merchandise. Any material adjustment shall require an appropriate adjustment to the franchise fees, if necessary, and the terms of ARSD 41:13:03:04 (4) shall apply.
- (d) Both parties understand that the State of South Dakota self-insures Government Facilities. Therefore, if a Government Facility is destroyed or damaged to an extent that in the sole discretion of the Department it is impractical to repair or replace, the Department makes no assurance that the Government Facility shall be repaired, improved or replaced.
- (e) If Government Facilities are damaged by the acts, omissions, or conduct of Concessionaire, its agents, employees or customers, which damage in the sole discretion of the Department is practical to repair or replace, it shall be the responsibility of Concessionaire to make the necessary repairs/replacements at its own expense to a condition satisfactory to the Department. If Government Facilities are damaged by the acts, omissions, or conduct of Concessionaire, its agents, employees or customers, which damage in the sole discretion of the Department amounts to a total loss or is impractical to repair or replace, Concessionaire shall compensate Department for the loss.
- (f) The Department shall have the right to enter the Marina, Government Facilities and Concessionaire Facilities for the proper administration of the terms of this Agreement and other purposes the Department deems necessary, including health and safety inspections.
- (g) In the event that a Concessionaire Facility is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, Concessionaire shall at its own expense, promptly restore the site to its natural condition to the extent that the Concessionaire Facility had an impact upon the site.

Section 7. Operations and Maintenance

- (a) Concessionaire shall operate the Marina in compliance with the terms and conditions of this Agreement including the performance standards for the Operation and Maintenance of the Marina set forth in Exhibit B. The performance standards are established in order to maintain a high standard of public service, physical appearance, operation, repair and maintenance.
- (b) Concessionaire shall comply with the specific dates and hours of services specified in Section 2 of Exhibit B.
- (c) Concessionaire, at its expense, shall provide all maintenance of Concessionaire Facilities, Government Facilities and Personal Property located within the Marina. The Concessionaire shall perform such work in accordance with the performance standards contained in Exhibit B. Concessionaire shall also be responsible for keeping the Marina free from litter, complying with environmental laws and regulations, complying with safety rules, laws and regulations, and maintaining in good order and in a safe condition the grounds, Government Facilities, Concessionaire Facilities, and Personal Property of and within the Marina and in accordance with the performance standards contained in Exhibit B.
- (d) At the expiration or termination of this Agreement, Concessionaire shall return to the Department the Government Facilities in the same condition or better condition than existed at the initiation of this Agreement, reasonable wear and tear excepted.
- (e) Concessionaire shall not do or permit to be done any act or thing within the Marina and within Concessionaire's operations which shall or might subject the Department to any liability or responsibility or injury to any person or to property by reason of any business or operation being carried on or upon the Marina or by Concessionaire. Concessionaire shall comply with all laws, orders and regulations of federal, state and local authorities, and with any direction of any public officer or officers pursuant to applicable laws which impose any order or duty upon Concessionaire with respect to the Marina, the use or occupation thereof, or with respect to Concessionaire's business and operations.
- (f) Concessionaire shall occupy the Marina as of the Effective Date and thereafter will continuously use the Marina solely for the purpose of providing the accommodations, facilities, services and merchandise identified in Section 3 and other uses incidental thereto. Concessionaire shall not use or knowingly permit any part of the Marina to be used for any unlawful purpose, and shall not

conduct or allow to be conducted any activity that shall constitute a nuisance.

- (g) Concessionaire shall not during the term of this Agreement, or during any period of holdover, use, store, generate or treat any Hazardous Materials on or within the Marina, except in accordance with all applicable, federal, state and local laws and regulations. Concessionaire shall not release or allow to be released into the environment any Hazardous Materials. Concessionaire shall indemnify, defend and hold harmless the Department from and against any loss, cost, damage, liability, or expense, including but not limited to attorneys' fees and disbursements, arising by reason of any clean-up, removal, remediation or detoxification action required under applicable federal, state and local laws and regulations by reason of the Concessionaire's use, generation, storage, treatment or release of Hazardous Materials. The foregoing covenants and indemnity obligation shall survive the expiration or any termination of this Agreement. "Hazardous Materials" shall mean (i) any biologically or chemically active or other toxic or hazardous wastes, pollutants or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and as hazardous wastes under the Resources Conservation and Recovery Act, 42 U.S.C. § 6010 et seq., (ii) any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., (iii) any "toxic pollutant" under the Clean Water Act, 33 U.S.C. § 466 et seq., as amended, (iv) any hazardous air pollutant under the Clean Air Act, 42 U.S.C. § 7401 et seq., 9v) hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and (vi) any hazardous or toxic substances or pollutant regulated under any federal, state or local law.
- (h) Any names, logos, trademarks, or copyrights (the "Intellectual Property") developed during or pursuant to this Agreement that in any way associates with, identifies, implicates, or infers an affiliation with the State of South Dakota, the Department, the State Park System, Lewis and Clark Recreation Area, and/or the Marina must receive prior approval from the Commission and belongs to the State of South Dakota upon creation and continues in the State of South Dakota's exclusive ownership upon termination of this Agreement. For all Intellectual Property approved by the Department, Concessionaire shall receive a non-exclusive, non-transferable license to use the Intellectual Property with respect to the accommodations, facilities, services and merchandise offered

for sale by Concessionaire. The license shall be limited to the sale of accommodations, facilities, services and merchandise from the Marina only. Concessionaire shall not offer for sale outside of the Marina, including by mail order, other store locations and the Internet, the services and merchandise without the Department's prior written consent. Concessionaire shall not be permitted to sublicense any of the Intellectual Property without the Department's consent. Concessionaire agrees to cooperate in the filing of any affidavits and applications by providing proof of use of the Intellectual Property upon the Department's reasonable request. Concessionaire acknowledges that the Department has the unrestricted authority to set the standards for the use of the Intellectual Property, as well as the standards, specifications and qualities of the accommodations, facilities, services and merchandise. As such, the Department shall have the right, at all reasonable times, to inspect Concessionaire's business locations, services and merchandise for quality verification purposes. The Department, on behalf of the State of South Dakota, does not make any representation or warranty with respect to the Intellectual Property and the use thereof, and expressly disclaims all representations and warranties including, without limitation, the warranty of non-infringement. Concessionaire agrees to promptly notify the Department of any possible infringement of the Intellectual Property by third parties or, of any claims of infringement against Concessionaire and/or the State of South Dakota made by a third party. The State of South Dakota shall have the sole right to bring any action for infringement and to recover and retain any and all damages.

Section 8. Utilities

Concessionaire shall pay costs for all utilities in the Marina, including but not limited to water, electricity, garbage disposal, telephone, television and telecommunication and wi-fi service. The Department shall be responsible for electrical costs of the sewer lift station located in the Marina. Maintenance responsibilities of Concessionaire for Department-owned utility systems within the Marina shall be in accordance with the performance standards set forth in Exhibit B.

Section 9. Accounting Records and Other Reports

- (a) Concessionaire shall prepare and maintain accounting records of the Marina segregated by profit center under generally accepted accounting principles that are customary for marina operating businesses. The records shall be made available for inspection by the Department on reasonable notice during normal working hours.

- (b) All capital costs of any fixtures, structures or improvements for which Concessionaire claims a Possessory Interest shall be recorded at actual cost and the depreciation schedule shall be based on generally accepted accounting principles, all of which shall be submitted to the Department at the time such capital assets are entered on Concessionaire's books.
- (c) Concessionaire shall submit to the Department annual accounting records and reports for the operation of the Marina to include Gross Receipts broken down by profit center. These records and reports along with state tax remittance forms are to be provided to the Department with the corresponding franchise fee payments as provided for in Section 10 as well as promotion fee payments as provided for in Section 11.
- (d) Concessionaire shall within one hundred twenty (120) days of the close of Concessionaire's fiscal year submit to the Department annual audited accounting records and reports for the operation of the Marina to include a consolidated balance sheet and income statement for all operations. Additionally, Concessionaire shall provide a profit and loss statement by profit center and all necessary supporting schedules.
- (e) The Concessionaire shall retain all records and reports required by law and under this Agreement for a period not less than five years following the expiration or termination of this Agreement and its amendments. The Department shall, at any time during the term of the Agreement and until five years after the expiration or termination of this Agreement, have access to and the right to examine any of the pertinent books, records, documents, and papers of Concessionaire related to this Agreement, including state and federal income tax records and returns. If the result of any audit or examination of the Concessionaire's financial records indicates substantial discrepancies from the information that is reported to the Department, the Department reserves the right to bill and the Concessionaire shall pay for the costs of conducting such audit or examination in addition to any other amounts payable to the Department pursuant to this Agreement.
- (f) From time to time, the Department may require Concessionaire to submit other reports and data regarding the Marina, Concessionaire's performance under this Agreement or otherwise, including but not limited to, operational information and capital progress reports.
- (g) Concessionaire agrees to waive any right to confidentiality of all records and reports identified in this section for Commission

purposes. This waiver is not intended to apply to third parties or the public at large, except as provided by State law and Subsection (h) below.

- (h) Concessionaire agrees to waive any right to confidentiality of records, reports and information contained therein for the purposes of preparing a prospectus and other documents for leasing the Marina, as necessary for any subsequent concessionaire to operate the Marina, or for other legislative or administrative purposes.

Section 10. Franchise Fees

Concessionaire shall pay to the Department a franchise fee during each year of the Agreement term which shall be a sum of money equal to the following:

- (a) Base rent of \$_____ annually; and,
- (b) _____ percent (___%) of Gross Receipts in excess of \$700,000.00 less restaurant receipts; and,
- (c) _____ percent (___%) of restaurant receipts

Base rent payments shall be made in three increments of \$_____ on January 30th, July 30th and October 30th annually. Payment for Gross Receipts in excess of \$700,000 and for annual restaurant sales shall be made no later than January 30th, for the preceding calendar year and shall be accompanied by accounting records as described in Section 9(c). Payments to the Department by Concessionaire not received on or before the due date shall be considered to be in arrears and subject to an interest payment equivalent to one and one-half percent (1.5%) per month of the unpaid amount which shall be added to the following month's remittance.

Section 11. Promotion Fees

In accordance with South Dakota Codified Law 41-17-22.1, a three percent (3%) promotion fee shall be assessed on all gross receipts including boat, motor and trailer sales. The fee which may be added to the price of the product or service will be collected at the point of sale by the Concessionaire. The Fee shall be paid by the Concessionaire to the Department on a monthly basis., All promotion fee payments shall be accompanied by accounting records as indicated in Section 9(c).

Section 12. Remedies, Termination or Expiration of the Agreement

- (a) Procedures upon termination or expiration of this Agreement shall be in accordance with ARSD Article 41:13 in effect at the Effective Date of this Agreement or as the same may hereafter be amended during the term of this Agreement.
- (b) Upon termination or expiration of this Agreement for any reason, and, in the event that Concessionaire is not to continue the operations authorized under this Agreement after its expiration, Concessionaire shall comply with all applicable requirements of Exhibit C to this Agreement, "Transition to New Concessionaire." This section and Exhibit C shall survive the expiration of this Agreement.
- (c) The Department may elect any and all remedies available to the Department under applicable law, including but not limited to the termination of this Agreement upon written notice in whole or in part at any time for default, and may terminate this Agreement upon written notice in whole or in part when necessary for the protection of visitors or area resources. Termination for default may be utilized in circumstances where the Concessionaire has materially breached any requirements of this Agreement, including but not limited to failure to provide obligated fee payments, maintain and operate the minimum required accommodations, facilities, services and merchandise as provided in Section 3 herein, sale of merchandise disapproved for sale, failure to meet the requirements of the operations and maintenance performance standards as set forth in Exhibit B, and has failed to cure the breach as set forth in this Subsection. If Concessionaire materially defaults on any of the terms or conditions of this Agreement, and does not cure or remedy such default within ten (10) days of receipt of written notice from the Department, or Concessionaire is not diligently proceeding to cure such default if the curing of such default cannot be reasonably effected within such ten (10) day period, the Department may terminate this Agreement without further notice. In the event of termination of this Agreement for default, the provisions of this Section apply.
 - (i) To avoid interruption of service at the Marina upon expiration or termination of this Agreement, Concessionaire shall, at the option and in the sole discretion of the Department:
 - (a) continue to provide visitor services for a reasonable time, as agreed upon in writing by the parties, to enable the Department to select a successor, and to allow the successor to otherwise comply with the terms of this Agreement in the ordinary course of business and endeavor to meet the standards of service and quality

that are required by the Department in order to maintain customer service in conjunction with Exhibit B; or

- (b) consent to the assignment of a temporary operator, or operation by the Department, for the operation of the Concessionaire Facilities and Personal Property for a period not to exceed 365 days; provided that the temporary operator or the Department pays Concessionaire a reasonable fee for the use of the Concessionaire Facilities and Personal Property, not to exceed ten percent (10%) annually of the depreciated book value of such Concessionaire Facilities and Personal Property used by the temporary operator or the Department, and prorated for the amount of time they are in use by the temporary operator or the Department.
- (c) consent to the purchase of Concessionaire's inventory and supplies by the temporary operator or the Department for use or resale purposes. The temporary operator or the Department must reimburse Concessionaire for any inventory and supplies purchased by Concessionaire and retained by the temporary operator or the Department for use or resale purposes. The value of the inventory and supplies retained by the temporary operator or the Department shall be determined by actual invoice amounts submitted to or paid by Concessionaire.
- (d) consent to the purchase and transfer of the on-sale liquor license used at the Marina at a price of \$75,000 to a temporary operator, successor concessionaire or the Department for use or resale purposes.
- (e) consent to the purchase and transfer of the "Intangible Items" as listed in the Settlement Agreement used at the Marina at a price of \$37,000 to a temporary operator, successor concessionaire or the Department for use or resale purposes.
- (f) The Department shall have a right to offset amounts owed to the Department against all amounts owed by the Department under this Agreement.
- (g) If any legal proceedings are brought by either party to this Agreement against the other in connection with the interpretation, application or performance of the terms and conditions of this Agreement, each party shall be required to pay its own attorney's fees and costs in connection with such proceedings. All amounts

due the Department by reason of any default on the part of Concessionaire shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date the amount is due until paid.

- (h) In addition to the rights and remedies provided for herein, the Department and Concessionaire shall each have all remedies at law or in equity, all remedies being cumulative.

Section 13. Possessory Interest Provisions

Possessory Interests for Government Facilities and Concessionaire Facilities shall be determined in accordance with ARSD 41:13. The Department shall have a right to offset amounts owed to the Department against all amounts owed by the Department for any Possessory Interests purchased by the Department.

Section 14. Indemnification, Waiver of Claims and Insurance

- (a) Concessionaire agrees to defend, hold harmless and indemnify the State of South Dakota, its officers, agents and employees from and against any and all actions, suits, damages, liabilities and expenses, including but not limited to attorneys' fees, in connection with the loss of life, personal injury and/or damages to property of third persons that may arise from or out of the occupancy, use or maintenance of the Marina, and as a result of performing services hereunder. This section does not require Concessionaire to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees. This indemnification shall survive the termination or expiration of this Agreement.
- (b) Concessionaire agrees that during the term of this Agreement Concessionaire shall maintain such insurance as Concessionaire deems necessary but agrees that the minimum amount of insurance Concessionaire shall acquire and maintain in full force and effect throughout the period of time covered by this Agreement shall be as set forth below. Concessionaire shall maintain the following coverages and limits, but may attain the same by means of supplementing the respective coverages with Excess Umbrella Liability
 - (i) Commercial General Liability Insurance: Concessionaire shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than Two

Million Dollars (\$2,000,000.00) for each occurrence and a per location aggregate limit of not less than Two Million Dollars (\$2,000,000.00). If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

- (ii) Business Automobile Liability Insurance: Concessionaire shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than One Million Dollars (\$1,000,000.00). Such insurance shall include coverage for owned, hired and non-owned vehicles.
- (iii) Excess Umbrella Liability Insurance: This coverage may be used to supplement any of the above liability coverage policies in order to arrive at the required minimum limit of liability coverage. In addition, coverage shall be at least as broad as that provided by underlying insurance policies, and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the "Excess Umbrella" liability policy.
- (iv) Worker's Compensation Insurance and Unemployment Insurance: This coverage shall be as required by South Dakota law covering Concessionaire employees as will protect itself and the State of South Dakota and agencies thereof from claims under the Worker's Compensation laws and unemployment insurance laws of the State of South Dakota.
- (v) Personal Property Insurance:
 1. Amount of Insurance: 100% of replacement value, without deduction for physical depreciation
 2. Insurance shall cover the Personal Property contained in all buildings, structures, improvements & betterments for all Government Facilities and Concessionaire Facilities and/or used in Concessionaire's operations.
 3. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
 4. The policy shall provide for loss recovery on a replacement value basis, without deduction for physical depreciation.
 5. "Blanket Amount" insurance is to be provided. The amount of insurance (limit of liability) should represent no less than 100% of the replacement value of the sum total

of all insured property, without deduction for physical depreciation.

6. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
 7. The vacancy and unoccupancy restriction, if any, must be eliminated for Personal Property that shall be vacant or unoccupied beyond any time period specified in the policy.
- (vi) Real Property Insurance: Concessionaire shall provide real property insurance to cover against loss to Concessionaire Facilities at 100% of replacement value (without deduction for physical depreciation).
 - (vii) Liquor Liability Insurance: Concessionaire shall maintain liquor liability insurance with a limit of not less than One Million Dollars (\$1,000,000.00).
- (c) These minimum requirements are subject to evaluation and revision every two years during the term of this Agreement or upon renewal or modification of this Agreement.
 - (d) Concessionaire, prior to engaging in and/or providing the services described herein, shall furnish satisfactory proof of such insurance by filing with the Department, a Certificate of Insurance from the Insurance Company verifying and certifying to the existence and limits of the required insurance. Such Certificate shall provide therein that no cancellation of said insurance shall be made or become effective without at least thirty (30) days' written notice being provided to the Department. Concessionaire is required to provide to the Department a current certificate of insurance at all times.
 - (e) Concessionaire agrees to report to the Park Supervisor any event encountered in the course of performance of this Agreement which results in injury or loss to any person or property, or which may otherwise subject Concessionaire, the State of South Dakota and/or their respective officers, agents or employees to liability. Concessionaire shall report any such event to the Park Supervisor immediately upon discovery. Concessionaire's obligation under this section shall only be to report the occurrence of any event to the Park Supervisor and to make any other report provided for by Concessionaire's duties or applicable law. Concessionaire's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the Park Supervisor under this section shall not excuse or satisfy any obligation of Concessionaire

to report any event to law enforcement or other authorities under the requirements of any applicable law.

- (f) The Department has no obligation to and is not responsible for payment of any money to Concessionaire that results from disruption of services.
- (g) Except as set forth in Section 6(e), neither the Department nor Concessionaire shall be liable to the other, nor to any SubConcessionaires, for any loss or damage to any building, structure or other tangible property owned by the other, including but not limited to lost rents, income and profits, even though such loss or damage might have been occasioned by the negligence of such party, its employees, agents, contractors or invitees. Concessionaire shall include in any lease, contract or agreement with a SubConcessionaire a provision in accordance with this Subsection.

Section 15. Repair and Maintenance Reserve Provisions

- a) Concessionaire shall establish a repair and maintenance reserve (the "Repair and Maintenance Reserve"). Concessionaire shall contribute to the Repair and Maintenance Reserve a sum no less than:
 - i) ___percent (___%) of the annual Gross Receipts less restaurant sales and fuel sales receipts; and,
 - ii) ___percent (___%) of restaurant sales and fuel sales receipts

This reserve shall be credited by the 15th of every month based upon the preceding month's Gross Receipts.
- b) Use of Funds. Funds in the Repair and Maintenance Reserve shall be used for the maintenance, repair and renovation of Concessionaire Facilities included in this Agreement.
 - (i) ___% of the total annual contribution may be expended by Concessionaire for repair and maintenance of Concessionaire Facilities on an emergency basis without prior approval. If not expended during any calendar year, the remainder shall be expended by Concessionaire under the provisions of Section 14 (b) (ii) hereof.
 - (ii) The remaining ___%, plus any amounts not expended under subsection (b)(i) of this Section 15 shall be administered and utilized for maintenance, repair and renovation of Concessionaire Facilities which projects have been previously approved by the Department.

- c) Unallowable Uses. Funds in the Repair and Maintenance Reserve shall not be used for the following:
- (i) Seasonal salaries of Concessionaire's employees, SubConcessionaire's employees, and/or independent contractors performing housekeeping and grounds keeping activities associated with Concessionaire's and SubConcessionaire's respective operations.
 - (ii) Routine maintenance including, but not limited to, periodic and/or occasional inspection, adjustment, lubrication, cleaning, painting, replacement of parts, repairs, and other activities intended to prolong service and prevent unscheduled breakdown.
 - (iii) Preventative maintenance, including planned or scheduled servicing, inspection and adjustment activities that result in continued service, fewer breakdowns, and intended to prevent premature failure of equipment and materials.
 - (iv) New construction or additions to existing facilities.
- d) Possessory Interest. Concessionaire does not obtain any right to a Possessory Interest for repair and maintenance of Concessionaire Facilities funded from the Repair and Maintenance Reserve.
- e) Approval process. An annual repair and maintenance plan of action shall be developed by Concessionaire and submitted to the Department for approval prior to the commencement date of this Agreement, by November 1, 2015, and by November 1 of each year thereafter. The plan shall outline proposed repair and maintenance projects consistent with the above requirements for the succeeding calendar year. If Concessionaire and the Department cannot agree on the plan of action, then the Commission shall make the final determination on the plan. The repair and maintenance plan shall be performed as approved prior to December 15 of the following year unless the approval contemplated the extension thereof, or unless an extension is granted by the Department. Concessionaire shall provide the Department with a detailed report of activities and the costs expended and incurred, for all annual repair and maintenance work completed. This report is due by January 1 of each year, unless an extension of time was granted.
- f) Carryover of funds on an annual basis. If a repair and maintenance project costs more than the balance included in the Repair and Maintenance Reserve, then Concessionaire, at Concessionaire's discretion may fund the repair and maintenance costs in excess of

funds in the Repair and Maintenance Reserve. The excess costs shall be refunded, without interest, to Concessionaire from funding to occur in subsequent years.

- g) Treatment of reserve funds at end of term. The parties agree to make every effort to exhaust all funds in the Repair and Maintenance Reserve by the end of the Agreement term. If there is a surplus at the end of the term, any remaining Repair and Maintenance Reserve funds shall be transferred to the Department for the purpose of ongoing maintenance of Concessionaire Facilities associated with this Agreement. If there is a deficit at the end of the Agreement term, Department shall compensate Concessionaire for the amount of the deficit.
- h) If this Agreement is terminated by the Department before the established expiration date, the Department shall reimburse Concessionaire for the cost of approved repairs and maintenance activities expended by Concessionaire which have been prepaid but not recovered by application of the annual Repair and Maintenance Reserve.

Section 16. General Provisions

- (a) Reference to the Department in this Agreement shall include the Department Secretary, Director of the Division of Parks and Recreation, Park Supervisor and their authorized representative(s).
- (b) Concessionaire shall comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to operating the Marina and providing services pursuant to this Agreement, and shall be solely responsible for obtaining current information on such requirements.
- (c) This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- (d) All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.
- (e) This Agreement and any operations and services authorized thereunder may not be assigned, sublet, extended, renewed or

amended in any respect, except when agreed to in writing by the Department and Concessionaire.

- (f) Concessionaire may not use SubConcessionaires, subcontractors or sublessees to perform the services described herein without the express prior written consent of the Department. Concessionaire shall include provisions in its Department-approved SubConcessionaire agreements requiring its SubConcessionaires, subcontractors, or sublessees to comply with all provisions of this Agreement, to indemnify the Department, and to provide insurance coverage for the benefit of the Department in a manner consistent with this Agreement. Concessionaire shall cause its SubConcessionaires, subcontractors, sublessees, and their agents and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements, and shall adopt such review and inspection procedures as are necessary to assure such compliance. Concessionaire shall remain responsible to the Department for obligations, responsibilities, and rights assigned to another by Concessionaire.

Concessionaire agrees and Department acknowledges that all records required under this Agreement shall be maintained in the name of and provided by _____ on behalf of Concessionaire.

- (g) In addition to the remedies afforded to the Department for breach of the terms of this Agreement, the Department reserves the right to bill Concessionaire for, and the Concessionaire agrees to pay to the Department, the actual costs incurred by the Department to provide any minimum required accommodations, facilities, services and merchandise for sale specified in Section 3 of this Agreement in the event Concessionaire fails to provide those minimum required accommodations, facilities, services and merchandise for sale.
- (h) In the event that a court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- (i) Concessionaire acknowledges and supports the Department's effort to collect park entrance fees to provide for the continued maintenance of the South Dakota state park system.
- (j) In each instance where the consent, approval or acceptance of the Department is required under the terms of this Agreement, such

consent, approval or acceptance shall be in writing and shall not be unreasonably withheld by the Department.

- (k) Concessionaire agrees that in performance of this Agreement it is acting as an “independent contractor” and not as an employee, representative or agent of the Department.
- (l) Any notice or other communication required under this Agreement shall be in writing and sent or delivered to the address set forth below. Notices shall be given by and to the Director on behalf of the Department, and by and to _____ on behalf of Concessionaire, or such authorized designees as either party may from time to time designate in writing.

Department

Director
Division of Parks & Recreation
523 East Capitol
Pierre, South Dakota 57501

Concessionaire

Corps of Engineers

District Engineer
Omaha District
215 North 17th Street
Omaha, NE 68102

Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail or, if personally delivered, when received by such party. Copies of all correspondence from Concessionaire to the Department or Director shall be sent simultaneously to the Park Supervisor.

- (n) No amendment or modification of this Agreement shall be effective for any purpose unless the same be in writing and signed by authorized representatives of the parties.

Section 17. Discrimination.

Concessionaire shall not discriminate against any person based upon race, color, national origin, religion, sex and disability in the operation and maintenance of the Marina and shall fully comply with Title VI of the 1964 Civil Rights Act, and applicable federal and state laws and regulations.

Discrimination on the Basis of Residence. Discrimination on the basis of residence, including preferential reservation, membership or annual permit

systems is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

Concessionaire shall not discriminate on the basis of disability, and is subject to Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and applicable federal and state laws and regulations.

Section 18. Park Entrance License Provisions.

- (a) All individuals entering or utilizing the Marina are subject to the park entrance license requirements and payment of the required fee except for the following:
 - (i) Employees or volunteers traveling under the most direct route from the park entrance to their designated work duty stations during designated working hours. Concessionaire shall provide employees with entrance license exemption decals, approved by the Park Supervisor, to display in their vehicles.
 - (ii) Any commercial or service vehicles doing direct business with the Marina.
 - (iii) Restaurant patrons parked in the area as identified on Exhibit A-4.
- (b) Concessionaire shall take reasonable steps to ensure that its patrons, employees, agents, and volunteers comply with the park entrance license fee requirements.

Section 19. Resident Use

- (a) Except for the on-site manager's residence, no portions of the facilities or Resort assigned hereunder shall be used for the purposes of seasonal or permanent residency unless authorized in writing by the Department.

Section 20. Surety Bond Requirement

The Concessionaire will furnish the Department with a surety bond, certificate of deposit or other instrument as approved by the Department in the name of the Department of Game, Fish and Parks effective for each year of the lease in the amount of \$42,000.00 conditioning the Concessionaire's faithful fulfillment and performance of the terms and conditions of this Agreement. The surety bond, certificate of deposit or other approved instrument shall be released to the Concessionaire upon termination or expiration of the lease after all Franchise Fees, Promotion Fees and other charges owed to the Department have been paid in full and facilities have been returned to the Department in a condition consistent with the terms of this Agreement. Commencing on _____, 2014, and continuing each January thereafter during the term of this Agreement, the Department shall review the Concessionaire's performance of its duties and obligations under this Agreement, and shall, in its sole discretion, determine whether to release, reduce, or maintain the bonding requirements set forth in this Section 20.

Section 21. Restaurant

The Concessionaire shall provide the Department for approval a detailed restaurant operating plan which addresses all services, products, staffing, management, hours, budgets, and repairs pertaining to the restaurant operation by March 15 of each year.

Upon prior written approval by the Department, restaurant facilities may be assigned and sublet by the Concessionaire to a qualified restaurant operator provided:

1. Sublet operator agrees in writing to perform all of the terms and conditions of this Agreement relating to food service the same as if it were being performed by the Concessionaire including but not limited to the collection and payment of Franchise Fees, Promotion Fees and reserve amounts required in this Agreement.
2. Concessionaire shall remain responsible throughout the term of this Agreement for any collection and payment of any Franchise Fees, Promotion Fees and reserve amounts required in this Agreement due to the Department as a result of any restaurant assignment or

sublease. The Department retains the right to exercise any and all remedies afforded to it in this Agreement to collect any unpaid fee obligations as a result of restaurant assignment or sublease.

Section 22. Boat, Motor and Trailer Sales

In accordance with Section 3(a) of this Agreement, the Department authorizes the Concessionaire to sell boats, motors and trailers at the Marina provided all such sales are conducted on site. All sales conducted under this section are subject to all fee and reserve fund requirements of this Agreement unless otherwise specifically stated.

Section 23. Procedure for Assignment, Sale or Transfer of Agreement

The parties agree that the provisions of ARSD Article 41:13 shall apply to the sale, lease, or transfer of this Agreement.

END OF AGREEMENT TEXT

The above and foregoing CONCESSION AGREEMENT was approved by the Game, Fish and Parks Commission on _____ authorizing the Director of the Division of Parks and Recreation to execute the same on behalf of the Commission."

Dated at _____, South Dakota, this ____ day of _____, 2014.

SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

BY: _____
Douglas Hofer, Director
Division of Parks and Recreation

CONCESSIONAIRE

BY: _____

U.S. ARMY CORPS OF ENGINEERS

BY: _____

List of Exhibits

Exhibit A

- A-1 – Land Assignments Map for area including Concessionaire and Government Facilities Assigned to the Concessionaire
- A-2 – List of Concessionaire Facilities and associated possessory interest
- A-3 – List of Buildings and Structures Constituting Government Facilities Assigned to the Concessionaire
- A-4 – Park Entrance License Exemption Area

Exhibit B

**PERFORMANCE STANDARDS FOR THE OPERATIONS AND
MAINTENANCE OF THE LEWIS AND CLARK MARINA**

Exhibit C

TRANSITION TO A NEW CONCESSIONAIRE

Exhibit D

**ADMINISTRATIVE RULES OF SOUTH DAKOTA ARTICLE 41:13, PARK
CONCESSION LEASES**

Exhibit A-1
Concession Lease Boundary
Lewis and Clark Marina



EXHIBIT A-2

List of Concessionaire Facilities and associated possessory interest

CONCESSIONAIRE IMPROVEMENT AUTHORIZATION AND DETERMINATION OF POSSESSORY INTEREST South Dakota Division of Parks and Recreation			
Exhibit A-2 attached to and made part of Agreement:			
Concessionaire:		Agreement (Effective Date):	
Concessionaire Facilities and Associated Possessory Interest			
Fac No	Qty	Description	Possessory Interest at Agreement Effective Date
1	7	48' X 18' open slips	100%
2	6	42' X 16' covered slips	100%
3	34	42' X 16' open slips	100%
4	30	36' X 14' covered slips	100%
5	16	36' X 14' open slips	100%
6	4	36' X 16' open slips	100%
7	6	40' X 16' open slips	100%
8	8	30' X 12' covered slips	100%
9	102	30' X 12' open slips	100%
10	16	30' X 14' open slips	100%
11	20	24' X 10' covered slips	100%
12	100	24' X 10' open slips	100%
13	20	18' X 10' covered slips	100%
14	40	18' X 10' open slips	100%
15	61	Personal Watercraft Slips	100%
16	1	Fuel and rental dock with credit card fuel pump and dispensers	100%
17	1	Courtesy Dock	100%
18	1	On site manager's residence	100%

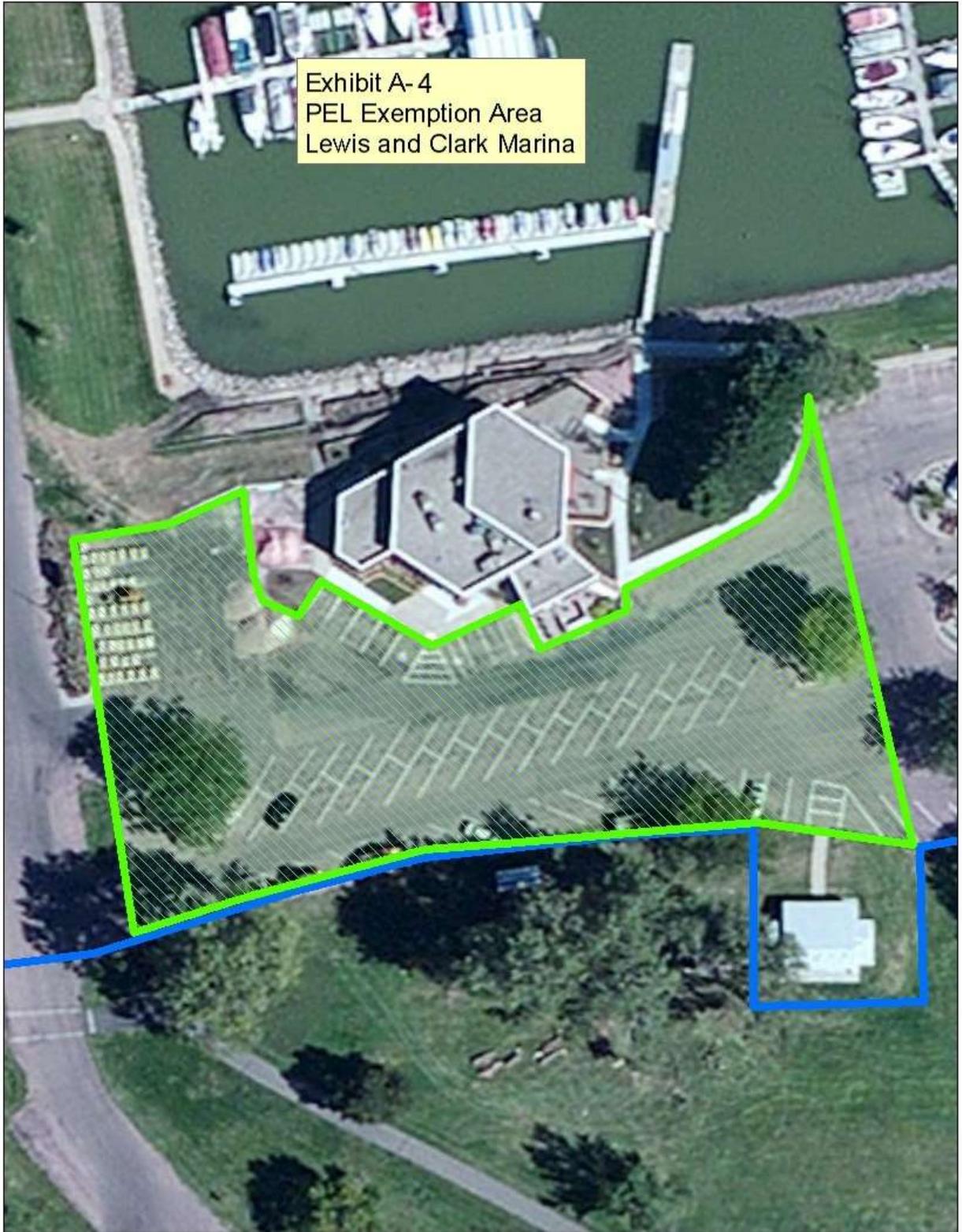


Exhibit A-4
PEL Exemption Area
Lewis and Clark Marina

EXHIBIT B

PERFORMANCE STANDARDS FOR THE OPERATIONS AND MAINTENANCE OF THE LEWIS AND CLARK RECREATION AREA MARINA

The following Performance Standards (“Standards”) of the operation and maintenance of the Marina sets forth the specific responsibilities to be performed by the Concessionaire as required by the Agreement entered into on _____ . These Standards are an integral element of the Agreement. These Standards set forth the general, operational and maintenance requirements of the Concessionaire with respect to all services, Government Facilities, Concessionaire Facilities and land assigned for use by the Concessionaire at the Marina, unless specifically provided for elsewhere in the Agreement between the parties. The Standards are subject to annual review and may be amended by mutual written agreement of the parties.

Any material deviation from the Standards set forth herein shall be a breach by the Concessionaire of the Agreement and shall be subject to the applicable terms and conditions set forth in the Agreement.

Section 1. General

All operations and activities shall be conducted in compliance with local, state and federal laws, regulations and standards applicable within the Marina. Use of the assigned area by the Concessionaire is limited to operation of the Marina set forth in the Agreement or as approved by the Department which are necessary to provide the minimum required and authorized services as outlined in Section 3 of the Agreement. The assigned area is defined by Exhibit A-1 of the Agreement. The Department reserves the right for the public to travel across the land, trails, and roads within the Marina boundaries. The Concessionaire shall not restrict access to public waters along the frontage of the Marina boundaries.

Section 2. OPERATIONS

(a) Dates of Operation

Marina facilities and services must be open and available to the public. The minimum season for all services except full restaurant food service is daily operation during May 1 until October 15th of each year. Full restaurant food service must be open and available daily to the public no later than the Friday preceding Memorial Day and closed no earlier than Labor Day of each year. Concessionaire shall have access to the Marina at all times during the term of the agreement. During those periods when the facilities and services

are not open to the public, the Concessionaire's activities shall be limited to those necessary to accomplish its administrative, maintenance, capital improvement and security obligations and responsibilities under the Agreement. Any exceptions to this must be approved by the Department. If the Marina is open or offering services beyond the minimum required dates as required by this Agreement, the Concessionaire must provide a schedule of the days, hours and services that shall be available to the Park Supervisor in advance of any changes in said schedule.

(b) Hours of Operation

- (i) On dates when the minimum required services are open and available to the public, operating hours shall be in accordance to the following schedule. Minimum hours of operation shall be required if this service is provided. Maximum hours of operation shall not be exceeded. Operating hours must be posted on the premises.

Operating Hours				
		Minimum	Maximum	Minumum days
	All Marina service except restaurant and service department	8:00 am to 8:00pm	6:00am to 11:00pm	Monday Through Sunday
	Service Department	8:00 am to 5:00pm	6:00am to 11:00pm	Monday through Sunday
	Restaurant	11:00 am to 9:00pm	7:00am to 11:00pm	Monday through Friday
		7:00 am to 9:00pm	7:00am to 11:00pm	Saturday and Sunday

- (ii) Deviations from this standard must be submitted in writing and in advance of any modifications and shall be subject to approval by the Department.
- (iii) An authorized representative of the Concessionaire shall be available to the Department's on-site representative at all

times to respond to and handle emergencies. A listing of authorized Concessionaire representatives and their permanent residence telephone numbers shall be provided to the Department at the commencement of the Agreement and annually thereafter to be included in the annual operating plan. Modifications to the listing shall be communicated to the Department within twenty-four hours of the same.

(c) Utilities

Electricity – The Concessionaire shall be responsible for activating electrical service with the electric provider and paying directly to the provider all electrical costs attributable to usage of the Marina. The Concessionaire shall be responsible for maintenance of the electrical services that serve the Marina. All electrical repairs shall be conducted by a qualified individual licensed by the South Dakota Electrical Commission.

(i) Water – The Concessionaire shall be responsible for activating water service with the water provider and paying directly to the provider all water costs attributable to usage of the Marina. The Concessionaire shall be responsible for maintenance of the water systems that serve the Marina. All water system repairs shall be performed by a qualified individual licensed by the South Dakota Plumbing Commission, unless for emergency temporary repairs required to prevent or minimize property damage or for public safety.

(ii) Sewer – The Department shall provide the waste water disposal service within the Marina. The Department shall be responsible for all major repairs and replacements required to maintain the sewer infrastructure. The Concessionaire shall be responsible for removal of all blockages of the sewer system within the Marina to ensure continuous availability of the sewer system for public use, including removal of blockages caused by the deposit of restaurant grease into the system. All sanitary sewer collection system repairs shall be performed by a qualified individual licensed by the South Dakota Plumbing Commission, except for emergency temporary repairs required to prevent or minimize property damage or for public safety. The Concessionaire shall not discharge or permit to be discharged any chemicals, substances or materials into any sanitary or storm sewer system that are not lawful and

labeled or designated as acceptable for such discharge into the sewer systems including restaurant grease.

- (iii) Garbage Disposal – The Concessionaire shall be responsible for contracting with a local garbage hauler and paying all costs directly to the hauler. The Concessionaire is responsible for providing dumpsters and receptacles of which the size, locations, colors and construction are acceptable to the Park Supervisor. Dumpsters shall be emptied and maintained as to not allow or encourage overflowing garbage, offensive odors or other unsightly problems. No disposal of refuse of any type shall be permitted within the Park without approval of the Park Supervisor.
- (iv) Communications - The Concessionaire shall provide wireless internet services in the restaurant and to the marina slips. Expenses for repairs and maintenance of the telephone and wireless internet systems are the responsibility of the Concessionaire.

(d) Department Activities

The Department shall advise the Concessionaire in advance of activities other than maintenance, law enforcement and inspections to be conducted within the Marina, notwithstanding the Department's rights to access as specified in the Agreement.

(e) Visitor Information

- (i) The Department shall provide at no expense to the Concessionaire, and the Concessionaire shall make available and provide without charge to all patrons and Marina visitors, informational literature, safety precautions and notification of potential hazards with respect to Lewis and Clark Recreation Area.
- (ii) The Department shall cooperate with the Concessionaire in the distribution and communication of available concession services and customer satisfaction surveys, so long as all materials are provided to the Department free of charge, and Department resources are available to perform the requested distribution and/or communication.
- (iii) In an effort to evaluate and improve public services provided by Concessionaires throughout the state park system, the Department may wish to implement customer satisfaction

surveys for Concessionaire patrons. The Concessionaire shall cooperate with the Department for the distribution, collection, and administration of any customer satisfaction surveys or comment cards.

(f) Orientation Training for Marina and Park Employees

- (i) All Marina employees and volunteers shall be expected to effectively and courteously respond to the public to inform them of all the Marina's and Park's services, activities, and information.
- (ii) The Concessionaire agrees on an annual basis to arrange for and allow Park employees to attend, or as otherwise agreed to be necessary by the Concessionaire and Park Supervisor, an orientation session scheduled and conducted by the Concessionaire to acquaint Park employees with the resources, features and services of Lewis and Clark Recreation Area. Concessionaire employees, and designated representatives that are employed by the Concessionaire at the time that the training is offered, shall participate in training provided by the Department on Park regulations and informational topics
- (iii) The Concessionaire shall ensure that all of its employees are trained in risk management, customer relations and food safety (where applicable-for staff involved in food handling).

(g) Advertising

- (i) In addition to the provisions of ARSD § 41:13:02:08, use of the State seal, Department or other logos affiliated with the Division of Parks and Recreation, is expressly prohibited without prior written approval of the Department.
- (ii) Promotional material distributed within the Park is restricted to services and facilities within the Park and region and is subject to approval by the Park Supervisor.

(h) Special Events

- (i) Special events planned or promoted by the Concessionaire must be proposed in writing and receive prior written approval of the Department. Written proposals shall be made at least 15 days in advance of the planned special event.

- (ii) Special events are those activities which materially deviate from the minimum required and authorized services. In addition to the written approval of the Department, special events permits may be necessary. Conformance to all Department regulations related to special events shall be required.

(i) Employees

- (i) Any changes or appointments proposed by the Concessionaire to the management personnel who oversee all areas of the Marina are subject to Department approval.
- (ii) Each on-site manager must possess the necessary experience and expertise to ensure a high quality marina operation. The Concessionaire shall employ only competent and orderly employees who shall keep themselves neat and clean and accord courteous and competent treatment and service to all patrons. Whenever the Department notifies the Concessionaire that a Concessionaire employee is rude or discourteous to customers, disorderly, incompetent or unsatisfactory, the Concessionaire shall investigate the matter thoroughly, and take appropriate corrective action.
- (iii) The Department shall issue to all employees and volunteers of the Concessionaire a park entrance license exemption decal to be placed and properly displayed in employee and volunteer vehicles at all times when the vehicles are parked within the Marina. The exemption shall be valid only for current employees and volunteers of the Marina while actively working at the Marina. The exemption decal is valid for employees or volunteers traveling under the most direct route from the Park entrance to their designated work duty station, during designated working hours.
- (iv) In providing visitor services, the Concessionaire must require its employees to observe strict impartiality as to rates and services in all circumstances.
- (v) The Concessionaire shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessionaire shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessionaire.

- (vi) The Concessionaire shall provide all personnel necessary to provide the visitor services required and authorized by this Agreement.
- (vii) The Concessionaire shall comply with all applicable laws relating to employment and employment conditions.
- (viii) The Concessionaire shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessionaire shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessionaire.
- (ix) The Concessionaire shall review the conduct of any of its employees whose actions or activities are considered by the Concessionaire or as reported to the Concessionaire by the Department to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.
- (x) The Concessionaire shall maintain, to the greatest extent possible, a drug free environment in the workplace and within the Marina. The Concessionaire shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, ingestion or use of a controlled substance is prohibited in the workplace and in the Marina, and specifying the actions that shall be taken against employees for violating this prohibition.
- (xi) Marina mechanics and service employees will be trained in the applicable marina factory service. At least one Marina mechanic will have valid factory certification from at least one major marina propulsion manufacturer. Proof of current certification shall be provided to the Department annually by March 15.

(j) Signs

- (i) The Department is responsible for providing and maintaining all traffic control signs within the Marina. The Concessionaire is responsible for providing and maintaining

all other signs within the Marina. All signs must be approved in advance by the Department and be of a design and fabrication that is consistent with the signage program of the overall Park.

- (ii) No signs, permanent or temporary, may be erected or placed outside of the Marina, on Department property without the prior written approval of the Park Supervisor.
- (iii) All signs shall be of a professional quality appearance.
- (iv) Signs or other paraphernalia visible to the general public associated with political candidates or issues is expressly prohibited. There shall be no signs visible from outside the buildings within the Marina that contain any advertisements or insignia that identify with intoxicating beverages without the written permission of the Department.

(k) Lost and Found

Items found by or turned in to the Concessionaire shall be returned to the owner if identifiable. All other items shall be tagged, showing the location found, name and address of the finder and turned into the Concessionaire office.

(l) Complaints

- (i) It is anticipated that from time to time a minimal number of complaints shall be received from the public who utilize the Marina and its services. The Concessionaire shall document and attempt to resolve any and all such complaints, including forwarding a copy of any written communications regarding the same to the Department and the Park Supervisor.
- (ii) Any complaints regarding the Marina received by the Department shall be documented and forwarded to the Concessionaire for resolution.

(m) Pets

Pets maintained by Marina employees or guests must be kept under control in accordance with established state park rules. Pets shall not be allowed in public areas such as the restaurants and stores with the exception of service animals pursuant to SDCL §§ 20-12-23.2, 20-12- 23.4, and applicable federal laws.

(n) Safety

- (i) The Concessionaire must maintain and test all life and property safety equipment, devices and systems according to established and applicable laws, rules, regulations, and codes. Such equipment, devices, and systems may include but are not limited to smoke detectors, fire extinguishers, fire suppression systems, alarms, escape routes and egress openings. Any malfunctions of safety equipment, devices and systems must be reported to the Park Supervisor immediately.
- (ii) The Concessionaire shall immediately notify the Department of any accident of which it has knowledge involving visitors, patrons or employees. The Department shall immediately notify the Concessionaire of any accident that involves personal injury or property damage in the Marina in addition to any pending or actual litigation.
- (iii) The Concessionaire must provide and promote policies and training to its employees on how to detect, report and minimize any unsafe or hazardous situations.

(o) Third Party Service Contractors and Vendors

Third party service contractors and vendors will only be allowed to work within the Marina with the prior approval of the Concessionaire, which shall not be unreasonably withheld if Marina cannot perform the work in a timely manner. The Concessionaire will have procedures in place to ensure that all third party vendors are subject to the same requirements and conditions of the Agreement as is the Concessionaire. Boat owners may authorize service providers to remove their boats from the Marina at any time for the performance of off-site service or repair work.

(p) Rentals

- (i) All equipment offered to the public for rental shall be maintained in good operating condition and appearance. Defective or damaged equipment shall not be rented at any time.
- (ii) All watercraft that are available for rent shall be equipped with at least one approved personal flotation device per rated passenger. All vessels shall comply with all state and U.S. Coast Guard regulations and laws.

- (iii) All watercraft that are on the water shall be discreetly identified with the company name and an identification number.
- (iv) The Concessionaire shall reasonably attempt to ascertain the prospective renter's ability and competency to safely operate the item(s) being rented. Where reasonable doubt as to the required ability and competency exist, the Concessionaire may refuse to rent the item(s).
- (v) The Concessionaire shall clearly indicate as part of the rental agreements utilized in its operation, the specific and implied liabilities resulting from a prospective customer's use of the rental equipment.

(q) Food and Beverage Service

- (i) The Concessionaire shall comply with all applicable health codes, laws and regulations in order to maintain the required South Dakota Department of Health food service establishment license. Copies of all inspection reports must be provided to the Department. The Concessionaire must immediately notify the Department of any deficiency or failure to comply as a result of Department of Health inspections.
- (ii) Food Safety Certification. The Concessioner shall have at least one full-time certified food safety manager. The manager shall be certified as a ServSafe Food Protection Manager by the National Restaurant Association. The Concessioner is required to train all employees involved in food preparation in compliance with all applicable laws.
- (iii) Liquor Laws. The Concessionaire shall have at least one full-time manager that has attended a liquor law training program and is required to train all employees involved in alcoholic beverage service in compliance with all applicable laws.
- (iv) On and off-sale alcoholic beverages shall be permitted to the extent that those services authorized under the Concession Agreement and subject to the Concessionaire's securing of all applicable licenses and permits and complying with all applicable state laws.
- (v) All foods, drinks, beverages, confections, refreshments and the like sold or kept on the premises for sale shall be of first quality, wholesome and pure and shall conform in all

respects to the applicable federal, state and municipal laws and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale, and all material on hand shall be sorted and handled with due regard for sanitation.

(r) Merchandise, Convenience Items and Accessories Sales

- (i) All merchandise, convenience items and accessories and the like sold or kept on the premises for sale shall be of high quality, wholesome and pure and shall conform in all respects to the applicable federal, state and municipal laws and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale. Concessionaire shall be responsible for collecting and remitting all sales taxes as required by law.

At minimum, store locations must provide the following:

1. First aid items such as bandages, antiseptics, pain relievers, skin ointments, sunscreen, and bug repellent.
2. Basic grocery, toiletry and personal items.
3. Ice
4. Fishing tackle and supplies.
5. Basic boating supplies

- (ii) Display areas and shelving are to be clean and attractive and the merchandise well-presented and uncluttered.
- (iii) No merchandise shall be sold which are obscene, sexually oriented, profane, vulgar or demeaning.
- (iv) Fireworks shall not be sold, stored or used at the Marina.

(s) Marina Repair and Service

Concessionaire shall warranty all repair and service work it performs for Marina patrons unless otherwise agreed to in writing in advance between Concessionaire and the customer.

(t) Marina Security

Competent and appropriately trained personnel will be on security duty 24 hours per day from May 15 through September 15 of each year. An on-site supervisor will reside in the Marina residence throughout the remainder of the year to provide security control.

Primary consideration will be given to the safety of people, personal property and marina facilities. The Concessionaire shall make arrangements with a local law enforcement agency for response service when enforcement situations arise in the Marina. Concessionaire will establish and share with the Department its procedure(s) for contacting law enforcement personnel for assistance when needed.

(u) Vehicle Management Plan

The Concessionaire will initiate and thereafter work with the Department to develop a vehicle management plan for the Marina. The objective of the plan will be to ensure adequate parking for Marina patrons within existing carrying capacities and Department regulations pertaining to vehicle use in state park and recreation areas. The plan will be in place by May 1, 2015, and reviewed annually. The Department reserves the right to enforce all Department regulations within the Marina including the park entrance license requirements for Non-Marina patrons utilizing marina parking lots to access and use park facilities outside the Marina.

(v) Boat and Trailer Sales Area

A specific area within the Marina will be designated for the display of boats and trailers for sale. The Concessionaire will work with the Department to determine the size and location of the sales area. It will be the responsibility of the Concessionaire to sign and maintain the sales area in an aesthetically pleasing manner that blends with the marina surroundings. All boats and trailers displayed for sale at the Marina will be restricted to the designated sales area. Boats may be displayed for sale on the water.

(w) Communications

The Concessionaire and the Department shall work together to ensure efficient and convenient levels of communication between marina patrons and the Concessionaire to ensure that marina patron feedback, comments and complaints are coordinated in a timely and responsive manner. At a minimum, the Concessionaire will provide the following:

1. Provide a bulletin board to be located at the entrance of each dock to allow marina slip holders to post messages for marina related events.
2. The Concessionaire will provide an after-hours phone number to contact marina staff in the event of an emergency.
3. The Concessionaire shall provide a comment card system to be located at all key facilities at the marina.

(x) Fuel Sales

- (i) Concessionaire shall be responsible for the proper fueling of all boats and for instructing the public who wish to fuel their own boats on the appropriate safety measures that must be undertaken prior to and during fueling.
- (ii) Concessionaire shall operate and maintain all fuel storage tanks and dispensing systems located within the Marina in compliance with applicable laws. Concessionaire shall provide the Department with a copy of all inspection reports prepared in connection with the operation and maintenance of the fuel storage and dispensing systems located within the Marina.

(y) Guide Service

- (i) Fishing Guide Service
 - 1. Guides must possess sufficient knowledge of park resources and safety procedures.

(z) Boat Slip Allocation Process

- (i) On or about January 1 of each calendar year, slip lease contracts will be sent out to all slip holders of record from the previous season. The concessionaire may refuse issuance of a new slip contract only if a slip holder of record has materially breached their Department-approved slip rental contract with the Concessionaire. It is required that the previous slip holder return the slip lease with full payment by February 15 to reserve the same slip for the new season. Immediately after that date, changes to slip type or location (requested by returning slip holders) are made if available.
- (ii) Once this process is complete with the previous year's slipholders, the assignment of vacant slips begins. New slip lease contracts are sent out to any person requesting a slip in writing for the new season on a first come, first served basis. In the case of an over demand for a particular size or location of slips the oldest written request will be honored first.
- (iii) The Department shall have access to all slip rental documentation and correspondence upon request.

SECTION 3. MAINTENANCE AND FACILITY IMPROVEMENTS

(a) General

All maintenance and facility improvements shall meet all federal, state or local legal and regulatory requirements, including the Americans with Disabilities Act.

(b) Plans and Materials

- (i) Proposals by the Concessionaire to change physical facilities, both Government Facilities and Concessionaire Facilities, shall follow procedures outlined in ARSD Article 41:13.
- (ii) All plans and materials are subject to Department approval.

(c) Maintenance Responsibilities-Concessionaire

For the purpose of this Agreement, the term “maintenance” shall include, but not be limited, to all routine, preventative and cyclical maintenance of facilities, equipment, utilities, and grounds necessary for the quality operation and appearance of the Marina.

- (i) Buildings and Structures – The Concessionaire shall maintain all buildings and structures, including Government Facilities, assigned to or owned by the Concessionaire, including but not limited to painting, electrical and plumbing maintenance and cleaning. Maintenance and cleaning should be equivalent to that generally provided by skilled workers using commercial quality building maintenance equipment and materials. Exterior and interior paint and roof colors must be approved in advance by the Department.
- (ii) Personal Property – The Concessionaire shall maintain all Personal Property assigned to or owned by the Concessionaire including, but not limited to painting, re-finishing, cleaning, and repairing. Maintenance and cleaning should be equivalent to that generally provided by skilled workers using commercial quality maintenance equipment and materials.
- (iii) Boat Docks and Slips – The Concessionaire shall maintain, replace, install and remove boat docks, slips and marina accesses as authorized and necessary. The dock surface, floatation and ramps must be in good condition, properly positioned and secured. They must be sturdy, free from cracks, protruding nails or boards or uneven or broken

surfacing. All dock canopies shall be kept clean and free of cobwebs.

- (iv) Boat Storage Yard –the Concessionaire shall maintain the boat storage yard and surrounding security fence at all times. The yard shall be kept neat and free of trash, scrap material and abandoned property. The fence and access gates shall be maintained at all times and the yard shall be secured when not attended my Marina staff.
- (v) Sanitary Boat Pump Out – Concessionaire shall be responsible for maintaining the sanitary boat pump out and lines connecting to the on shore lift station.
- (vi) Sidewalks, Steps, Decks and Landings – The Concessionaire shall maintain all concrete, sidewalks, steps, decks, landings and access points within the Marina. All walking surfaces shall be in good condition, level, smooth, and properly positioned and secured. They must be sturdy, free from cracks, protruding nails or boards or uneven or broken surfacing.
- (vii) Grounds – Mowing weed, and pest control within the boat storage area and the fenced shop yard shall be the responsibility of the Concessionaire. The grounds shall be maintained at a level that will provide an attractive, safe, functional and nuisance-free environment. The Concessionaire may only use marine rated pesticides in bug control efforts.
- (viii) Garbage and Trash – The Concessionaire shall be responsible for all litter pickup and removal of trash in the Concession Area. Garbage and trash from the Marina shall be disposed of on a regular basis through a Concessionaire maintained contract with a local garbage hauler. The Concessionaire shall provide outdoor receptacles in high traffic areas. All receptacles are to be provided by the Concessionaire and shall be kept clean, well maintained, serviceable and contained where necessary.
- (ix) Flagpoles, Television and Radio Antennas, Satellite Dishes – The Concessionaire shall provide maintenance for all masts and electronic systems for entertainment/communication devices. As with other structures, construction, modification or relocation of these devices require prior written approval of the Park Supervisor.

- (x) Health and Safety – Facilities assigned to the Concessionaire are subject to periodic inspections for health and safety requirements. Repairs, corrections, improvements or operational changes determined necessary by the Department as a result of these inspections shall be at the sole cost and responsibility of the Concessionaire.
- (xi) Fire Protection Equipment – The Concessionaire shall provide and maintain in good working order, fire detection and protection systems that conform to and comply with applicable laws. The Concessionaire shall comply with all directives or recommendations of the Fire Marshall's office.
- (xii) Locks – The Concessionaire shall provide the Park Supervisor with Marina facility keys or access codes necessary for security, emergency or other lawful purposes.
- (xiii) Winterizing Facilities – The Concessionaire is responsible for taking appropriate measures to protect all facilities for which the Concessionaire has maintenance responsibility. Protective measures may include (but not limited to), draining and flushing of water lines, window bracing, and utility shut-offs. The Concessionaire is responsible for spring re-opening while it is the concessionaire.

Snow Removal. The Concessionaire shall be responsible for snow removal within the Marina including parking lots and sidewalks that serve Concessionaire facilities. The Concessionaire is responsible for marking fire hydrants, propane tanks, and other fuel storage/dispensing facilities with snow stakes/flags and for keeping snow clear around hydrants.

- (xiv) Grease Traps (if applicable). The Concessionaire shall be responsible for maintaining grease traps. Grease traps must be pumped on a regular basis, with documentation available to the Department, and the grease disposed of outside the Park and in accordance with applicable laws. The Concessionaire shall notify the Department within 24 hours in the event of a grease trap failure.
- (xv) Restrooms. All restrooms within Marina shall be well maintained by the Concessionaire, cleaned and restocked with paper products a minimum of two times per day on weekdays and at least four times daily during weekends and holiday peak periods. The concessionaire shall post and maintain cleaning schedules in all restrooms. Fixtures and equipment shall be fixed immediately upon notification of a

problem. No bathroom fixture shall be left out of order for more than 24 hours.

- (xvi) Restaurants. Restaurant tables and chairs shall be well maintained and repaired to ensure a pleasant and safe guest experience. Any scratches and/or defacement of items shall be fixed or the piece of furniture shall be replaced prior use. All tables and chairs (unless historic) shall be replaced or refurbished if a furnishing does not meet facility standards. Soft goods, including linen, shall be clean and free from any stains, holes or tears. An adequate inventory of replacement soft goods shall be kept on hand in order to replace damaged soft goods.

The Concessionaire is responsible for annually cleaning and inspecting active chimneys and exhaust ducts, Inspecting range/grill hoods monthly and cleaning as required.

- (xvii) Retail Operations. All shelving and merchandise display areas shall be sound, secure, clean and presentable.
- (xviii) Removable equipment. All Concessionaire operated appliances, machinery, and equipment; including parts, supplies and related materials will be maintained, serviced, and repaired per manufacturer's recommendations, and replaced as necessary.
- (xix) Gas tanks, pumps, lines, spill containment system and leak detection. All systems included in the fuel storage, delivery, dispensing, and leak/spill detection must be maintained by the Concessionaire to ensure its optimum functionality.

(d) Maintenance Responsibilities-Department

- (i) Roads and Parking Lot – The Department will be responsible for maintenance of roads and parking lots within the Marina. This maintenance will include necessary crack seal, pothole repair and surfacing of paved areas. Snow Removal will be in accordance with Section 3 (d) (ii) of this Exhibit below.
- (ii) Snow Removal – The Department will be responsible for snow removal necessary to maintain access to the public boat ramp located within the Marina. Snow removal will be performed on weekdays (Monday – Friday) during regular park employee work hours (8:00 a.m. – 5:00 p.m.). During

these periods, the Department is not obligated to perform snow removal until snowfall, blowing and drifting have ceased. The Department cannot guarantee snow removal for the access road outside of regular park employee work hours, but agrees to cooperate if staff is reasonably available to perform such duties. .

- (iii) Government facilities – the Department shall be responsible for major repairs or replacement of facilities due to end of useful life.
- (iv) Groundskeeping – the Department shall be responsible for all mowing, tree maintenance and removal, weed/pest control, and maintenance of landscaping within the Marina with the exception of the boat storage area and the fenced shop yard.

SECTION 4. INSPECTIONS AND AGREEMENT COMPLIANCE REVIEWS

(a) Maintenance Inspections

- (i) Representatives from the Department and the Marina shall conduct preventative maintenance and inspections of the Marina grounds and facilities. At a minimum, at least one inspection will be held in the spring a week prior to Memorial Day and in the fall no later than October 31. The purpose of the inspection will be to identify the current conditions and maintenance levels of the facilities and Personal Property therein.
- (ii) Upon analysis of the results of the inspection, the Department will present the Concessionaire with a written list of maintenance objectives for which the Concessionaire is responsible and a written list of maintenance objectives for which the Department is responsible in the Marina. The Department and the Concessionaire will jointly agree to the prioritization of the projects and the schedule for completing the identified maintenance work. The Department and Concessionaire shall also agree as to what projects are to be included to satisfy the Repair and Maintenance Reserve as required in Section 15 of the Concession Agreement. The Concessionaire shall submit a repair and maintenance program and plan to the Department for approval no later than November 1 of each year.
- (iii) In the event that the Concessionaire refuses or fails to perform any of the projects identified by a date and time

specified in the written inspection report, the Department specifically reserves the right to complete the project(s) and charge the resulting expenses to the Concessionaire.

(b) Health, Safety, and Fire Inspections

- (i) There may be other inspections as required by law or insurance policies pertaining to but not limited to health, safety, fire, and environmental rules and regulations that are the responsibility of other agencies or authorities. The Concessionaire must notify the Department in advance of any such inspection and allow Department staff to accompany the inspection.
- (ii) Copies of the inspection or report must be provided to the Department upon request. Any failures, substandard or otherwise unsatisfactory scores, inspections or individual components of an inspection must be reported to the Department immediately.

(c) Agreement Compliance Audits

- (i) The Department reserves the right to conduct Agreement Compliance Audits during the course of each Agreement year. The purpose of the Audit will be to ascertain on a qualitative and quantitative basis, the Concessionaire's compliance with all requirements of the Agreement. The form and content of such an audit may include but not be limited to inspections, product sampling, customer surveys, blind shopping, interviews and other techniques as required to satisfy the Department that all elements and requirements are being performed at a level consistent with the Standards and other covenants of the Agreement. A written summary of the results of the performance audit will be provided to the Concessionaire. When remedial actions are needed, a specific date will be given for a follow-up audit to ensure the necessary corrective measures have been taken. In the event that corrective measures have not been implemented by the date specified, the Department reserves the right to take the necessary action and then bill the Concessionaire for the direct cost of the corrective action taken.

EXHIBIT C

TRANSITION TO A NEW CONCESSIONAIRE

Section 1. In General

The Department and the Concessionaire hereby agree that, in the event of the expiration or termination of this Agreement for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessionaire is not to continue the operations authorized under this Agreement after the Termination Date, the Department and the Concessionaire in good faith will fully cooperate with one another and with the new Concessionaire or Concessionaires selected by the Department to continue such operations ("New Concessionaire" for purposes of this Exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to park area visitors and minimize transition expenses.

Section 2. Cooperation Prior to the Termination Date

Any time the Director notifies the Concessionaire that it will not continue its operations upon the Termination of this Agreement, the Concessionaire shall, notwithstanding such notification:

(a) Continue Operations.

Continue to provide visitor services and otherwise comply with the terms of the Agreement in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

(b) Continue Bookings.

Continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken; not divert any bookings to other facilities managed or owned by the Concessionaire or any affiliate of the Concessionaire; and notify all guests with bookings for any period after the Termination Date that the facilities and services are to be operated by the New Concessionaire. The Concessionaire may quote rates based upon rates approved by the Department. Promptly following notification to the Concessionaire by the Department of the selection of the New Concessionaire, the Concessionaire shall provide the New Concessionaire with a copy of Concessionaire's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessionaire, and thereafter the Concessionaire shall update such log on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each

guest, and the guest's (1) address, (2) contact information, (3) dates of stay, (4) rate quoted, (5) amount of advance deposit received and (6) confirmation number, if applicable.

(c) Designating a Point of Contact and Other Actions.

Cooperate with the Department and the New Concessionaire to ensure the smooth transition of operations by: (1) designating one of the Concessionaire's executives as the point of contact for communications between the Concessionaire and the New Concessionaire; (2) providing the Department and the New Concessionaire with access to any assigned Real Property Improvements, including "back-of-house areas" and including copies of the keys to assigned Real Property Improvements; (3) providing the Department and the New Concessionaire with full access to the books and records, licenses and all other materials pertaining to any assigned Government Facilities and Concessionaire Facilities and the Concessionaire's operations in general; (4) providing the Department and the New Concessionaire with copies of all maintenance agreements, equipment leases (including short-wave radio) service contracts and supply contracts, including contracts for on-order merchandise (collectively, "Contracts"), and copies of all liquor licenses and other licenses and permits (collectively, "Licenses"); (5) allowing the New Concessionaire to solicit and interview for employment all of the Concessionaire's salaried and hourly employees, including seasonal employees through a coordinated process implemented by the Concessionaire; and (6) not entering into any contracts or agreements that would be binding on any assigned Government Facilities or Concessionaire Facilities or operations in general after the Termination Date without the prior written agreement of the New Concessionaire.

(d) Financial Reports.

Within 30 days after receipt of the notification of the selection of the New Concessionaire, provide the New Concessionaire with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessionaire's operations in general as of the last day of the month prior to receipt of such notification.

Thereafter, the Concessionaire shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum:

- (i) A balance sheet for the Concessionaire's assigned Real Property Improvements, if any;
- (ii) a schedule of pending accounts payable; and
- (iii) a schedule of pending accounts receivable.

(e) Inventory and Personal Property.

Provide the New Concessionaire with a complete, detailed and well-organized list of physical inventory, supplies, and other Personal Property owned or leased by the Concessionaire in connection with its operations under the Agreement (including a list of such items that are on-order) The list shall be provided to the New Concessionaire within thirty (30) days following receipt of the notification of the selection of the New Concessionaire, shall be updated monthly thereafter, and shall designate those items that the Concessionaire believes are essential to maintaining the continuity of operations or the special character of its operations. The Concessionaire shall assist the New Concessionaire in reviewing and validating the list.

(f) Other Information and Reports.

Provide the New Concessionaire with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessionaire's operations for the period of one year prior to notification of the selection of the New Concessionaire, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessionaire, and shall be updated periodically (but no less frequently than thirty (30) days) until the Termination Date.

(g) Access to Facilities

Provide the New Concessionaire reasonable access to Concessionaire Facilities and Government Facilities to facilitate the transition and transfer.

(h) Other Cooperation.

Provide the Department and the New Concessionaire with such other cooperation as may be reasonably requested.

Section 3. Cooperation Upon the Termination Date.

Upon the Termination Date, the Concessionaire shall:

(a) Transfer of Contracts and Licenses.

Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessionaire that the New Concessionaire elects to assume.

(b) Reservation Systems.

- (a) Provide the New Concessionaire with an update of the reservation log through the Termination Date;
- (b) disconnect its operations from the Concessionaire's centralized reservation system, if any; and
- (c) cooperate with the New Concessionaire in transitioning to the New Concessionaire's reservation system.

(c) Fees and Payments.

Within ten (10) days after the Termination Date, the Concessionaire shall provide the Department with an itemized statement of all fees and payments due to the Department under the terms of the Agreement as of the Termination Date, including, without limitation, all deferred, accrued and unpaid fees and charges. The Concessionaire shall, within ten (10) days of its delivery to the Department of this itemized statement, pay such fees and payments to the Department. The Concessionaire and the Department acknowledge that adjustments may be required because of information that was not available at the time of the statement.

(d) Access to Records.

Notwithstanding any other provision of this Agreement to the contrary, upon the Termination Date, the Concessionaire shall make available to the Department for the Department's collection, retention and use, copies of all books, records, licenses, permits and other information in the Concessionaire's possession or control that in the opinion of the Department, are related to or necessary for orderly and continued operations of the related facilities and services.

(e) Removal of Marks.

Concessionaire shall within thirty (30) days after Termination, remove (with no compensation to Concessionaire) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessionaire.

(f) Other Cooperation.

Provide the Department and the New Concessionaire with such other cooperation as may be reasonably requested.

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ARTICLE 41:13**PARK CONCESSION LEASES**

Chapter	
41:13:01	Definitions.
41:13:02	General provisions.
41:13:03	Expiration or amendment of lease.
41:13:04	Sale of interest in lease.

CHAPTER 41:13:01**DEFINITIONS**

Section	
41:13:01:01	Definitions.

41:13:01:01. Definitions. Terms used in this article are defined as follows:

(1) "Concessionaire," an operator of resort, restaurant, or marina services in the state park system who is authorized under a written lease or agreement directly with the Department of Game, Fish and Parks;

(2) "Concessionaire facilities," buildings, structures, fixtures, and other improvements permanently affixed to a building, structure, or lands subject to concession leases or agreements in such a manner as to be a part of the realty, provided by the concessionaire at the concessionaire's expense for the purposes of its concession lease or agreement. This term includes marina docks and slips provided by the concessionaire;

(3) "Government facilities," any buildings, structures, utility systems, fixtures, and other improvements permanently affixed to a building, structure, or lands subject to the concession leases or agreements that are constructed or acquired by the government and provided by the government for use by the concessionaire as provided in a concession lease or agreement;

(4) "Possessory interest," the financial interest of a concessionaire in concessionaire facilities, but not in the land on which such facilities are located, and in improvements to government facilities made at the concessionaire's expense with prior written approval of the commission;

(5) "Fair market value," as defined by the Uniform Standards of Professional Appraisal Practice, copyright 2003, by The Appraisal Foundation;

(6) "Personal property," any equipment, furniture, and goods necessary for concession operations that is not recognized as a fixture;

(7) "Commission," the South Dakota Game, Fish and Parks Commission;

(8) "Department," the South Dakota Department of Game, Fish and Parks; and

(9) "Qualified appraiser," a professional appraiser who holds the designation of a member of the Appraisal Institute or other similar designation.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

Reference: **Uniform Standards of Professional Appraisal Practice**, 2003 edition, The Appraisal Foundation. Copies may be obtained from The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, DC 20005-3517. Cost: \$20.

CHAPTER 41:13:02

GENERAL PROVISIONS

Section

41:13:02:01	Application of article.
41:13:02:02	Establishment of possessory interest.
41:13:02:03	Compliance with performance standards.
41:13:02:04	Treatment of personal property.
41:13:02:05	Franchise fee.
41:13:02:06	Repair and maintenance reserve.
41:13:02:07	Fees, rates, and prices for services and merchandise offered by a concessionaire.
41:13:02:08	Names, logos, trademarks, and copyrights.
41:13:02:09	Information and reporting.
41:13:02:10	Insurance.
41:13:02:11	Collateral.
41:13:02:12	Breach of lease or agreement.

41:13:02:01. Application of article. Unless an existing concession lease or agreement provides to the contrary, this article applies to new leases of concessionaires executed after the effective date of this article. As it relates to the current concession leases or agreements for Custer State Park and Spring Creek Resort, the following sections from the existing (1990) administrative rules shall apply between the effective date of this article and the expiration of the current lease in effect: subdivision 41:13:01:01(4), § 41:13:02:02, and §§ 41:13:03:02 to 41:13:03:04, inclusive.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:02. Establishment of possessory interest. A possessory interest may be established by a concessionaire in concessionaire facilities or government facilities to the extent the interest is purchased from a previous concessionaire, or paid for and constructed by the concessionaire with prior approval from the commission. Before construction, the commission shall identify all improvements and additions to the concession as either concessionaire facilities

or government facilities. Possessory interest shall be transferred at the time a concession lease or agreement is executed and shall be so acknowledged in the new concession lease or agreement. Possessory interest values, including initial values at the beginning of a concession lease or agreement, shall be defined in or included as an exhibit to that document. The approval process for crediting of a possessory interest for improvements and additions funded by the concessionaire shall be defined in the lease or agreement with prior approval of the commission.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:03. Compliance with performance standards. A concession lease or agreement shall include minimum performance standards. The concessionaire shall comply with these performance standards to the satisfaction of the commission. Such compliance constitutes satisfactory performance of the terms of the concession lease or agreement. Failure to comply with such standards constitutes grounds for termination of the concession lease or agreement.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:04. Treatment of personal property. A concessionaire shall provide and be responsible for the maintenance, upkeep, and replacement of any personal property required under the terms of a lease or agreement.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:05. Franchise fee. The concession lease or agreement shall provide for payment of a franchise fee or other monetary consideration as determined by the commission. In establishing a fee the concessionaire's reasonable opportunity to realize a profit on its operations commensurate with its capital invested and the obligations assumed shall be considered. A franchise fee shall be subordinate to protecting park values and providing quality visitor service.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:06. Repair and maintenance reserve. In addition to a franchise fee, the concession lease or agreement may contain provisions that require the concessionaire to set aside a percentage of gross receipts or otherwise establish a reserve fund for repair, maintenance, and renovation to be used by the concessionaire for maintenance, repair, and renovation of concessionaire facilities and government facilities located in park areas and utilized by the concessionaire in the concessionaire's operations. The concessionaire and the commission shall review the reserve fund on an annual basis and agree upon a budget for the use of the reserve fund for the year in advance. The lease or agreement shall included project review and approval procedures. Projects to be funded entirely with reserve funds are not eligible for possessory interest credit. In certain circumstances, the lease or agreement or the commission may authorize the expenditure of repair and maintenance reserve funds or the establishment of another reserve for

the replacement of personal property if the personal property is integral to the visitor experience or visitor safety. The concessionaire shall maintain the reserve fund. The concessionaire shall provide the commission with an annual accounting of the reserve fund's use. The commission and the concessionaire shall make every effort to expend all reserve funds by the end of the lease or agreement term. If there is a surplus at the end of the lease or agreement term, any remaining reserve funds shall be transferred to the commission for the purpose of ongoing maintenance of concessionaire facilities and government facilities associated with the respective concession lease or agreement. If there is a deficit at the end of the lease or agreement term, the concessionaire shall be granted possessory interest credit in the amount of the deficit.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:07. Fees, rates, and prices for services and merchandise offered by a concessionaire. All fees, rates, and prices offered to the public by a concessionaire shall be reasonable and comparable to the fees, rates, and prices offered for similar services in the region of the concessionaire's operations or outside the region if similar services are not provided in the region. In addition, the commission reserves the right to establish reasonable standards as to the nature, type, and quality of the concessionaire's service and merchandise.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:08. Names, logos, trademarks, and copyrights. Any names, logos, trademarks, or copyrights developed during or pursuant to a concession lease or agreement that in any way associates with, identifies, implicates, or infers an affiliation with the State of South Dakota Division of Parks and Recreation or the state park system, must receive prior approval from the commission and belongs to the state upon creation and continues in the state's exclusive ownership upon termination of the lease or agreement.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:09. Information and reporting. The department, commission, or their representative shall have access to concessionaire books and records for the purposes of examination. The lease or agreement shall include requirements for reporting of financial data or reports, including any audit requirements and other operation reports and indicate the required frequency of the reporting. The lease or agreement shall include provisions that the concessionaire waive any right to the confidentiality of propriety information concerning the lease or agreement that the department determines to include in a prospectus issued under this article.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:10. Insurance. The lease or agreement shall include minimum requirements for insurance, including types of insurance and amounts of coverage levels, and those to be named as additionally insured.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:11. Collateral. The lease or agreement may require the concessionaire to furnish appropriate forms of collateral to insure performance of the obligations included in the lease or agreement.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:02:12. Breach of lease or agreement. The lease or agreement shall contain provisions addressing breach of the lease or agreement by the commission or the concessionaire.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

CHAPTER 41:13:03

EXPIRATION OR AMENDMENT OF LEASE

Section

41:13:03:01	Duration of concession lease or agreement.
41:13:03:02	Procedure to determine compensation to a concessionaire upon expiration of lease or agreement.
41:13:03:03	Procedure for binding arbitration.
41:13:03:04	Compensation to concessionaire.
41:13:03:05 to 41:13:03:07	Repealed.
41:13:03:08	Responsibilities and procedures prior to issuance of new lease or agreement.
41:13:03:09	Procedures for selection and award.
41:13:03:10	Prospectus requirements.
41:13:03:11	Principal selection factors.
41:13:03:12	Publication of notice of issuance of prospectus.
41:13:03:13	Minimum period to respond to prospectus.
41:13:03:14	Rejection by commission.
41:13:03:15	Proposal review -- Selection of successor -- Continuation of existing lease.
41:13:03:16	Requirements in the event of termination or expiration.

41:13:03:01. Duration of concession lease or agreement. The concession lease or agreement, except for existing concession leases or agreements under negotiation, amendment, or

renegotiation on the effective date of this article, may be issued for a term that the commission determines is required to allow the concessionaire a reasonable opportunity to realize a profit on the concessionaire's operations commensurate with the concessionaire's capital invested and the obligations assumed for the planned and negotiated investments by a concessionaire.

If, during the term of a concession lease or agreement, the commission and concessionaire agree that an authorized major addition, renovation, repair, or replacement should be made to the concessionaire's facilities or governmental facilities, to be provided by the concessionaire at the concessionaire's expense, the commission may extend the lease or agreement as provided in this section. At such time, all terms and conditions of the lease shall be reevaluated. This paragraph does not apply during the last 18 months before the expiration of the concession lease or agreement.

During the term of the concession lease or agreement, but not during the last 18 months before the expiration of the concession lease or agreement, the concessionaire may present to the commission for authorization a proposal for a major project that the concessionaire believes warrants an extension to the lease or agreement. This proposal shall include the following:

- (1) A description of the proposed project, including consistency with park goals, and a description of why the improvements are in the public interest;
- (2) An independent assessment of the market and financial viability of the proposed project;
- (3) An independent cost estimate of the proposed project; and
- (4) An analysis of the number of additional years required as part of the extension of the lease or agreement.

The commission shall review the proposal within 60 days and evaluate the proposal using the criteria listed above.

If determined by the commission to be in the public's best interest, the commission may at least 12 months prior to the termination of an existing concession lease or agreement negotiate with the concessionaire new lease terms and conditions. If the commission determines not to negotiate or the concessionaire does not accept the commission's terms and conditions, the existing agreement shall terminate according to the terms of the agreement. The commission shall select and award a new concession or lease agreement as provided in § 41:13:03:09 and this chapter. Nothing in this section is intended to provide a concessionaire with any expectation of concession lease or agreement extension or renewal.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:02. Procedure to determine compensation to a concessionaire upon expiration of lease or agreement. Prior to the expiration of a concession lease or agreement, the following procedure shall be used:

- (1) At least 12 months before expiration of a concession lease or agreement the commission shall determine the fair market value of the possessory interest of the concessionaire in the concessionaire facilities or government facilities pursuant to the end date of the contract and subdivision 41:13:03:04(1). The fair market value shall be determined by an appraisal performed by a qualified appraiser. A copy of the appraisal shall be provided to the concessionaire upon its

completion. The department and the concessionaire shall each pay 50 percent of the cost of the appraisal. Upon recommendation of the department, the department and concessionaire shall mutually select the qualified appraiser. If agreement cannot be reached within 15 days, the commission shall have the final determination of the qualified appraiser;

(2) If the department or the concessionaire is not satisfied with the appraised fair market value, either party may request in writing, within 30 days after receipt of the appraisal value, that the fair market value be determined by binding arbitration as provided in § 41:13:03:03; and

(3) Upon receipt of the appraisal or the valuation determined by arbitration, the commission shall prepare and publish a prospectus containing the valuation of the possessory interest of the concessionaire facilities or government facilities in an attempt to find a qualified successor concessionaire.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:03. Procedure for binding arbitration. The procedure for binding arbitration is as follows:

(1) The department or concessionaire may, by written notice to the other within 30 days after receipt of the appraisal, appoint an arbitrator of its choice. The other party, by written notice within 15 days after receipt of notice, shall appoint a second arbitrator of its choice. In default of a second appointment, the first arbitrator appointed shall be the sole arbitrator;

(2) When two arbitrators have been appointed, they shall, if possible, agree on a third arbitrator and appoint the arbitrator by written notice signed by them. A copy of their notice shall be mailed to each party within 15 days after notice has been given of the appointment of a second arbitrator;

(3) If 18 days elapse after the appointment of the second arbitrator without notice of appointment of the third arbitrator, then both parties shall select the third arbitrator from members of the alternative dispute resolution section of the State Bar of South Dakota; and

(4) The arbitrators shall hold an arbitration hearing at a location determined by the arbitrators within 30 days after the final appointment of the arbitrators. The arbitrators shall allow each party to present their case, evidence, and witnesses, if any, in the presence of the other party and shall determine the fair market value of the property.

Each party shall pay the cost and expense of its appointed arbitrator. The costs and expenses of a sole arbitrator or the third arbitrator shall be paid equally by the department and the concessionaire.

The determination of the majority of the arbitrators is binding on the parties to the arbitration although each party retains his right to appeal any questions of law arising at the hearing.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

Cross-Reference: Evidence, SDCL title 19.

41:13:03:04. Compensation to concessionaire. Compensation for a possessory interest held by the concessionaire upon expiration of the concession lease or agreement, unless otherwise provided in the lease or agreement, shall be determined as follows:

(1) Possessory interest in concessionaire facilities or government facilities authorized by the commission shall be valued for purposes of compensation to the concessionaire by the successor concessionaire at fair market value; and

(2) No compensation is due the concessionaire from a successor concessionaire for the concessionaire's personal property used in operations under a lease or agreement. However, a successor concessionaire may purchase such personal property from the concessionaire subject to mutually agreed upon terms;

(3) The department retains the option to purchase concessionaire possessory interest in concessionaire facilities if the Legislature appropriates funds for acquisition in the amount of the fair market value or the value determined by arbitration as provided in § 41:13:03:03; and

(4) If the department chooses not to issue a subsequent lease or agreement, the department retains the option to direct the concessionaire to remove the concessionaire facilities from the park and restore the premises to the extent that the facilities had an impact upon the grounds. In this situation, the concessionaire shall be compensated for the concessionaire's possessory interest in concessionaire facilities or government facilities in the amount of book value and the cost to the concessionaire of restoring the premises to the extent that the facilities had an impact on the grounds. Book value is the unrecovered cost of the possessory interest in concession facilities or government facilities that have been identified in the lease or agreement and are represented as such on the concessionaire's federal tax return or audited financial statements.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:05. Preferential right of renewal. Repealed.

Source: 16 SDR 148, effective March 21, 1990; repealed, 32 SDR 55 effective October 17, 2005.

41:13:03:06. Procedures for preferential right of renewal. Repealed.

Source: 16 SDR 148, effective March 21, 1990; repealed, 32 SDR 55, effective October 17, 2005.

41:13:03:07. Consideration by commission. Repealed.

Source: 16 SDR 148, effective March 21, 1990; repealed, 32 SDR 55, effective October 17, 2005.

41:13:03:08. Responsibilities and procedures prior to issuance of new lease or agreement. Prior to the issuance of a new concession lease or agreement, the commission may require the assistance of the concessionaire in developing materials for a public solicitation. This assistance may include access to facilities and records for performing a condition assessment of the facilities (including concessionaire facilities and government facilities), listings of personal property, financial and utilization reports, and other cooperation. The concessionaire shall provide such assistance as reasonably requested. Prior to commencement of the steps included in this section, the concessionaire and the commission shall agree on terms of confidentiality and treatment of provided information not addressed in § 41:13:02:09.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:09. Procedures for selection and award. Except as provided in § 41:13:03:01, the commission shall award concession leases or agreements through a public solicitation process. The public solicitation process shall commence with the issuance of a prospectus. The prospectus shall invite the public to submit proposals for the contract. The prospectus shall describe the terms and conditions of the concession lease or agreement to be awarded and the procedures to be followed in the selection of the best proposal. The commission may not issue a prospectus earlier than 12 months prior to the expiration of a related existing concession lease or agreement.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:10. Prospectus requirements. The prospectus shall include:

- (1) Minimum visitor service requirements;
- (2) The minimum franchise fee or other forms of consideration required by the state;
- (3) Lease term;
- (4) Minimum performance standards;
- (5) Measures requested to ensure the protection and preservation of park resources;
- (6) Capital investments, if any;
- (7) Facilities and services provided to the concessionaire by the state for the concessionaire's use and operation over the course of the lease;
- (8) An estimate of the possessory interest compensation due to the existing concessionaire at signing;
- (9) Gross receipts by category for the last three years and the most recent year's concessionaire's personal property and merchandise inventory;
- (10) Selection factors, including minimum requirements; and
- (11) Other such information that the commission may deem necessary to assist bidders in the preparation of a prospectus.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:11. Principal selection factors. The principal selection factors are:

- (1) Managerial experience;
- (2) Financial capabilities;
- (3) Franchise fees and benefits offered to the department and the state; and
- (4) Any other criteria considered by the commission to be pertinent, including any additional proposed capital investment.

A prospectus shall indicate the maximum potential scoring available for each of the selection factors.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:12. Publication of notice of issuance of prospectus. Upon issuance of the prospectus, the department shall publish notice of issuance in a manner selected to notify persons likely to be interested in providing a response to the prospectus. Notice shall include a narrative description of the prospectus; the solicitation process; where to obtain a copy of the prospectus; and the place, date, and time responses to the prospectus are due. Two publications of the notice of issuance of the prospectus in at least three newspapers of general circulation in different parts of the state, with the first publication seven to ten days prior to the second, shall be construed as compliance with the publication requirement.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:13. Minimum period to respond to prospectus. Interested parties shall have a minimum of 30 days to respond to the prospectus, with the actual numbers of days to be specified in the prospectus.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:14. Rejection by commission. A proposal may be rejected by the commission if the proposal has not met the minimum requirements and is unresponsive to criteria outlined in the prospectus.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:15. Proposal review -- Selection of successor -- Continuation of existing lease. Six months prior to the expiration date of the concession lease or agreement, the department shall review the proposals it has received from prospective concessionaires.

Three months prior to the expiration date of the concession lease or agreement, the commission shall select the successor concessionaire based upon criteria outlined in the prospectus.

If the commission does not find a qualified prospective concessionaire or does not select a successor concessionaire by the expiration date of the concession lease or agreement, the commission may continue the existing concession lease or agreement on an annual basis.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:03:16. Requirements in the event of termination or expiration. Upon termination of the lease or agreement for any reason, or upon its expiration, and except as otherwise agreed upon between the concessionaire and the department, the concessionaire shall, at the concessionaire's expense, promptly vacate the area defined in the lease or agreement. The concessionaire shall remove all personal property and repair any damage caused by installation or removal of such personal property, except as agreed upon between the concessionaire and the department.

In addition to these actions, the lease or agreement may include specific actions to be taken by the concessionaire to assist in the continuation of operations.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

CHAPTER 41:13:04

SALE OF INTEREST IN LEASE

Section

- 41:13:04:01 Conflicting rules not applicable to Custer State Park.
- 41:13:04:02 Assignment, sale, or transfer.
- 41:13:04:03 Sale -- Change in controlling interest.
- 41:13:04:04 Notice of intent to sell, bankruptcy, or insolvency.
- 41:13:04:05 Department to issue prospectus.
- 41:13:04:06 Repealed.
- 41:13:04:06.01 Procedures for selection and award under sale and transfer.
- 41:13:04:07 Repealed.

41:13:04:01. Conflicting rules not applicable to Custer State Park. Any application of a rule in this chapter that conflicts with SDCL 41-17-22.4 does not apply to concessionaire leases of property located in Custer State Park.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:04:02. Assignment, sale, or transfer. A concessionaire may assign, sell, or transfer the concessionaire's possessory interest in a concession lease or agreement in the event of death to

a beneficiary, assignment for collateral purposes to a lender, or a transfer to existing partners or shareholders only with prior written approval of the commission.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:04:03. Sale -- Change in controlling interest. The sale referred to in § 41:13:04:02 includes any sale, assignment, or transfer of an interest in a concession lease or agreement, assets not in the ordinary course of business, shares of stock, or any other interest in the business entity, including a corporation, partnership, or other association of persons, which has the effect of transferring controlling interest of the business entity from that which was present at time of execution of the original lease or agreement or as subsequently approved by the commission to another person or business entity.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:04:04. Notice of intent to sell, bankruptcy, or insolvency. A concessionaire shall submit in writing to the department notice of the concessionaire's intention or desire to sell, assign, or transfer any of the property referred to in § 41:13:04:02. The notice of intent is not effective for purposes of this chapter if it is submitted within 18 months of the expiration of the concession lease or agreement. The notice of intent can be withdrawn at any time by the concessionaire if all reasonable costs and expenses incurred by the department for the prospectus are paid by the concessionaire.

The concessionaire shall give the commission notice, within five days, after the filing of any petition in bankruptcy, filing any petition seeking relief under any federal bankruptcy laws, or making any assignment for the benefit of creditors. The concessionaire shall also give the commission, within five days, notice of any petition or other proceeding against the concessionaire for the appointment of a trustee, receiver, or liquidator, or the taking by any person or entity of the rights granted by the concession lease or agreement, or any part thereof upon execution, attachment, or other process of law or equity.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:04:05. Department to issue prospectus. Upon receipt of the notice of intent to sell, the commission shall prepare and the department shall publish a prospectus for the lease of its facilities and the sale and transfer of the possessory interest of the concessionaire in government facilities or concessionaire facilities used to provide the concession services in an attempt to find a qualified successor concessionaire. The concessionaire shall provide to the department for inclusion in the prospectus a listing of personal property that the concessionaire is willing to sell to a successor concessionaire as provided in subdivision 41:13:03:04(2). This listing and any value the concessionaire provides for this personal property to the department shall be included in the prospectus for informational purposes. The value of the concessionaire's possessory interest in concessionaire facilities or government facilities shall be in accordance with subdivision 41:13:03:02(1) and the value shall be published accordingly in the prospectus. With the approval

of the commission, the prospectus may or may not be consistent with the terms of the existing concession lease or agreement. If a written agreement is not reached within six months from the first publication of the prospectus and approved by the commission, the commission may, if requested in writing by the concessionaire, publish another prospectus as provided in this section.

Source: 16 SDR 148, effective March 21, 1990; 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:04:06. Commission to select successor. Repealed.

Source: 16 SDR 148, effective March 21, 1990; repealed, 32 SDR 55, effective October 15, 2005.

41:13:04:06.01. Procedures for selection and award under sale and transfer. The commission shall select the successor concessionaire based upon criteria outlined in the prospectus.

Source: 32 SDR 55, effective October 17, 2005.

General Authority: SDCL 41-17-1.1(6).

Law Implemented: SDCL 41-17-1.1(6).

41:13:04:07. Consideration by commission. Repealed.

Source: 16 SDR 148, effective March 21, 1990; repealed, 32 SDR 55, effective October 17, 2005.