

CONCESSION AGREEMENT SPRING CREEK RESTAURANT

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 authorized by the South Dakota Game, Fish and Parks Commission and is subject to and governed by the requirements of ARSD Article 41:13 subtitled Park Concession Leases effective October 17, 2005, (the "Rules") a copy of which has been provided to Concessionaire.

WITNESSETH

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

Whereas, the Department desires for a limited and prescribed portion of Spring Creek Recreation Area to be operated by a Concessionaire as a restaurant open to the general public; 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 restaurant concession in a portion of Spring Creek Recreation Area as a Concessionaire as defined in the Rules.

Now therefore, for the purposes of carrying out concession operations 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 three (3) years, commencing on _____ and ending on _____ with two one (1) year renewal options for up to no more than five (5) total years upon written agreement between both parties if so agreed to by no later than thirty (30) days of each expiration date.

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 Spring Creek 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) "Government Facilities" means as defined under ARSD 41:13:01
- (i) "Park" means the property within the boundaries of Spring Creek Recreation Area.
- (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. Concessionaire shall report all of its revenues to the Department without allowances, exclusions or deductions of any kind. For purposes of calculating franchise fees, hunting and fishing license (not including agent fees), and park entrance license sales will be excluded from Gross Receipts.
- (k) "Personal Property" means as defined in ARSD 41:13:01.
- (l) "Restaurant" means those areas within the main Resort building not occupied by the Department which including the upstairs dining and kitchen area of the lodge building.
- (m) "Park Supervisor" means the management of Spring Creek

Recreation Area or his or her duly authorized representatives.

Section 3. Services

- (a) Concessionaire shall provide the following services within the restaurant:
 - 1. Restaurant food service – Full time restaurant service from May 1 to September 15 with minimum hours of 11:00am to 9:00pm. Weekly days and hours of operation are to be established by May 1 of each calendar year and are subject to approval of the Department.
- (b) The Department authorizes the Concessionaire to provide only the following additional services within the restaurant. The Department retains the right to approve these or any other additional services contemplated by the Concessionaire in advance.

Additional Authorized Accommodations, Facilities and Services:

- 1. Licensed on- sale liquor and malt beverage sales.
- 2. The Lessee shall not permit gambling on the premises, except for video lottery machines of the type authorized by SDCL Ch. 42-7A.

Section 4. Facilities

- (a) The Department hereby assigns for use by Concessionaire, the portion of the Resort building and the equipment described in Exhibit A attached to this Agreement.
- (b) Concessionaire may not make modifications to Government Facilities without the prior written approval from the Department.
- (c) Concessionaire has inspected the restaurant and equipment and is thoroughly acquainted with their condition and accepts them in an “as is” condition.
- (d) Both parties understand that the State of South Dakota may self-insure 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.

If Government Facilities are damaged by the acts 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 in an amount not to exceed \$25,000 per occurrence. If Government Facilities are damaged by the acts 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 pay Department an amount not to exceed \$25,000 per occurrence to compensate Department for the loss.

- (e) The Department shall have the right to enter the Restaurant, for the proper administration of the terms of this Agreement.

Section 5. Operations and Maintenance

- (a) Concessionaire shall operate the Restaurant in compliance with the terms and conditions of this Agreement.
- (b) Concessionaire shall be responsible for all maintenance, which for the purpose of this Agreement shall include, but not be limited, to all routine, preventative and cyclical maintenance of facilities, cleaning and maintenance of equipment, kitchen appliances & cookers, grease trap, and of cleaning of public restrooms necessary for the quality operation and appearance of the Restaurant. Concessionaire shall provide to the Department copies of service records and invoices for all service and repairs to Government Facilities.
- (c) Major replacement, maintenance or repair of the facilities or restaurant equipment not due to the Concessionaire's misuse, waste, or neglect or that of the Concessionaire's employee, family, agent, or visitor, will be the responsibility of the Department.
- (d) The Concessionaire shall be responsible for all litter pickup and disposal of trash in the Restaurant Area to the provided container. The Concessionaire shall be responsible for costs of regular waste hauling from its designated container.
- (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 use or knowingly permit any part of the restaurant to be used for any unlawful purpose and shall not conduct or allow to be conducted any activity that shall constitute a nuisance.

- (f) Concessionaire acknowledges and agrees that the State makes available for purchase and use by Concessionaire within the restaurant the alcoholic beverage license currently held by the Department for \$1.00. At the expiration or termination of this agreement said license shall be transferred back to the Department for \$1.00 in a prompt manner.
- (g) 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, Spring Creek Recreation Area, and/or the restaurant must receive prior approval from the Department. 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 6. Utilities

The Department shall pay all invoices for water, sewer, and electricity.

Section 7. Fees

Concessionaire shall pay to the Department a franchise fee which shall be a sum of money equal to four percent (4%) of all Gross Receipts during each year of the Agreement term. Payment shall be made no later than November 30th for the current calendar year and shall be accompanied by accounting records as described in Section 8. 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.

Section 8. Accounting Records and Other Reports

- (a) Concessionaire shall prepare and maintain accounting records of the restaurant segregated by profit center under generally accepted accounting principles that are customary for restaurant operating businesses. The records shall be made available for inspection by the Department on reasonable notice during normal working hours.
- (b) Concessionaire shall submit to the Department annual accounting records and reports separated for the operation of the restaurant to include Gross Receipts broken down by profit center.

Section 9. Remedies, Termination or Expiration of the Agreement

- (a) 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 remove all inventory, personal property and restore the facility to the same condition or better condition than existed at the initiation of this Agreement within thirty (30) days.
- (b) 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 maintain and operate the minimum required services 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.
- (c) In the event of termination of this Agreement for default, the provisions of this Section apply.
- (d) 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.
- (e) 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 10. 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 restaurant, 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 at least the following amounts of insurance:
 - (i) Commercial General Liability Insurance: Concessionaire shall maintain occurrence based commercial general liability insurance or equivalent form. 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) Liquor Liability Insurance: If the Concessionaire wishes to purchase the liquor license and sell liquor, the Concessionaire shall maintain adequate liquor liability insurance.
- (c) 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
- (d) 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, or any pending or actual litigation. 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.

- (e) The Department has no obligation to and is not responsible for payment of any money to Concessionaire that results from disruption of services.
- (f) Neither the Department nor Concessionaire shall be liable to the other 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 through such loss or damage might have been occasioned by the negligence of such party, its employees, agents, contractors or invitees.

Section 11. Inspections

(a) Maintenance Inspections

Representatives from the Department and the restaurant shall conduct preventative maintenance and inspections of the restaurant facilities. The purpose of the inspection is to identify the current conditions and maintenance requirements of the facilities and Personal Property therein.

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.

Section 12. Operations

(a) Advertising

- (i) In addition to the provisions under 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.
- (b) 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 Restaurant services and disrupts normal public access. 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.
- (c) Signs
 - (i) No signs, permanent or temporary, may be erected or placed outside of the restaurant, on Department property without the prior written approval of the Park Supervisor.
 - (ii) All signs shall be of a professional quality appearance.
 - (iii) Signs or other paraphernalia visible to the general public associated with political candidates or issues is expressly prohibited.
- (d) Complaints
 - (i) 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 restaurant received by the Department shall be documented and forwarded to the Concessionaire for resolution.
- (e) 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.

Section 13. General Provisions

- (a) Reference to the Department in this Agreement shall include the Secretary, Director, Park Supervisor and his/her authorized representative.
- (b) Concessionaire shall comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to operating the restaurant 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.
- (g) 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.
- (h) Any contractual agreement to provide services to the public must be consistent with the terms of the concession agreement and are subject to Department approval.
- (i) In the event that the applicable 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.
- (j) 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.

- (k) 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 not be unreasonably withheld by the Department.
- (l) Concessionaire agrees that in performance of this Agreement it is acting as an "independent contractor" and not as an employee of the Department.
- (m) 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 the below listed contact 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

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 14. 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 restaurant 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 15. Security Deposit

The Concessionaire shall provide to the Department a Security Deposit of \$5,000.00 conditioning the Concessionaire's faithful fulfillment and performance of the terms and conditions of this Agreement. The Security Deposit shall be refunded to the Concessionaire upon termination or expiration of the lease after all Franchise Fees and facilities have been returned to the Department in a condition consistent with the commencement of this Agreement less any amounts owed to the Department or costs of damages caused by Concessionaire.

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_____2025 .

SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

BY: _____
Jeffrey A. VanMeeteren, Director
Division of Parks and Recreation

CONCESSIONAIRE

BY: _____

EXHIBIT A
List of Buildings and Structures Constituting
Government Facilities and
List of Equipment/Intellectual Property Constituting Government
Property Assigned to the Concessionaire

BUILDINGS AND STRUCTURES CONSTITUTING GOVERNMENT FACILITIES	
Concessionaire:	Effective Date:
Buildings and Structures	
Fac. ID No.	Description
	Restaurant operating space in the Spring Creek Restaurant building as follows: Entire Upper Floor including the upper exterior deck; Main floor – restrooms and dedicated office space; Lower floor – Walk-in cooler.
Equipment/Intellectual Property	
	Duke Thurmaduke Serial #01022846 (Salad Bar)
	Cayenne Vollrath Serial #17502 (Soup Warmer)
	Computer Till
	Glass Tender Sink, Ice Chest, Glass and Liquor holder
	True Cooler Serial #7331213
	Atosa Kegerator and Cooler Serial #C4009
	Superior Beer Cooler Serial # 4408753
	Supremetal Sink, Ice chest, Liquor Holder
	Cookrite Warming Table Serial #CSTEA3C2007050256
	True Refrigerator Table Serial #7103653
	Ascend Freezer Serial # VF21-1009-0277
	Federal Steak Maker Model 4000
	Atosa Ice Maker 01021111500C40879
	Artic Air Commercial Freezer Serial #H7164881
	Arctic Air Commercial Freezer Serial # 231617
	Walk-In Cooler Serial # 54120-FN-1
	Ecolab Dish Washer (Rented from Sysco)
	Sentinel Microwave
	Alto Shaam HA1D Heat Serial #5478-06-892
	CookRite Griddle with table 4003935
	Grill Top
	CookRite Stove/Oven Combo AGR69AUS200321100500C40023
	Dean Fryer Serial #1003MA1096
	CookRite Fryer ATFS40AUS200320072000C40050

	Utilatub Model 19
	Ansul Fire Suppressor Serial # 104250
	Danby Mini Fridge
	Vizio TVs (7 units)
	Various cooking utensils, dining utensils, bar and dining glassware, serving trays, storage, tables and chairs, pots & pans, bar stools, patio furniture.
	Captive Air Hood
	Upright Freezer
	2'x2.5' Stainless Steel Table
	Dishwashing Station
	3 Basin Sink Station
	Atosta Refrigerator Prep Table MFS8306GRAUS1T0321022500C40022
	6'x2.5' Stainless Steel Table
	PrepPal Meat Slicer PPSC12HD
	Atosta Beverage Refrigerator
	Beverage Refrigerator (unknown brand)
	Lincoln Impinger Pizza Oven
	Insinkerator Garbage Disposal
	Hatco Water Heater BoosterInsinkerator Garbage Disposal
	Hatco Glo-Ray Food Warmer (2)Hatco Water Heater Booster
	Galaxy Glass CoolerHatco Glo-Ray Food Warmer (2)
	Galaxy Glass Cooler