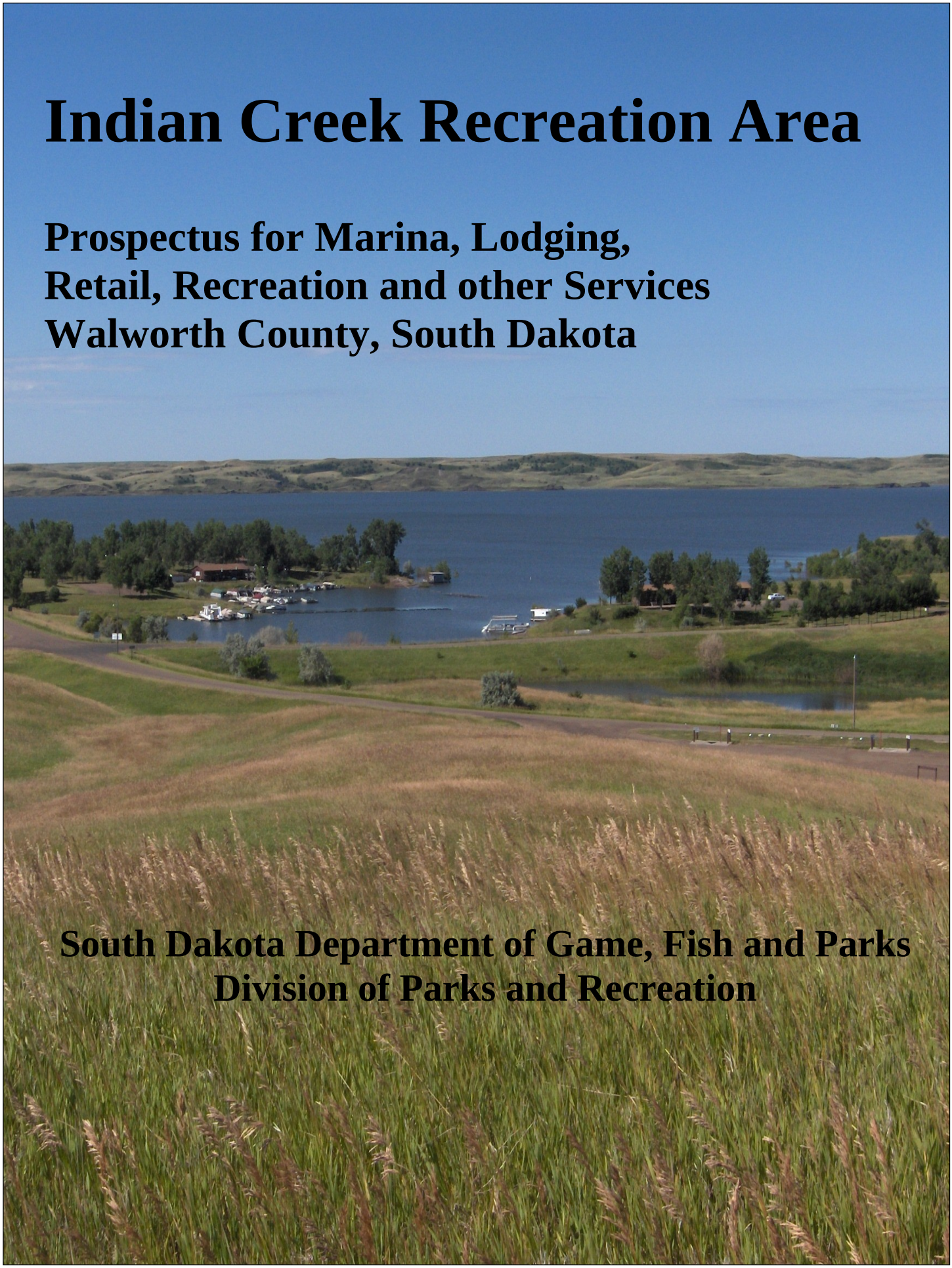
# Indian Creek Recreation Area

## Prospectus for Marina, Lodging, Retail, Recreation and other Services Walworth County, South Dakota



**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 14, 2011

Dear Prospective Concessionaire:

In north central South Dakota sits a popular outdoor destination. Located on Lake Oahe is Indian Creek Recreation Area. This park is a growing attraction for outdoor enthusiasts across the region.

Bridge City Marina is situated along the banks of Lake Oahe on the Missouri River near Mobridge, South Dakota. The business features seasonal boat slips, convenience store, bait/tackle, 3 duplex lodging cabins and a 4 unit motel type facility with Laundromat room.

Bridge City Marina is currently commercially operated under the terms of a Corps of Engineers lease which is now administered by the Department of Game, Fish and Parks. This opportunity includes the issuance of a new ten-year lease with the Department in accordance with the current rules under which concession leases are administered. The structures, docking facilities and equipment for the marina are owned by the current leaseholders, Jerry and Janice Frailing. The concessionaire has negotiated a sale of the Marina and has issued their intent to sell and have agreed to sell the facilities and equipment under the terms and conditions 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 Indian Creek Recreation Area, and consider the opportunity of operating this marina in one of South Dakota's finest parks. If you have any questions, please call Sean Blanchette with the Division of Parks and Recreation at 605-773-3391 or Jim Straight, Indian Creek Recreation Area Park Manager at 605-845-7112.

Sincerely,

Douglas Hofer

Douglas Hofer
Director, Division of Parks and Recreation

# INDIAN CREEK RECRATION AREA

## Prospectus for Marina, Lodging, Retail, Recreation And other Services

## South Dakota Division of Parks and Recreation

**Date Issued:** October 14, 2011

**Offer Must be Received By:** 3:00 P.M. Central Daylight Time on November 16, 2011

**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

INDIAN CREEK RECREATION AREA

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

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# SECTION I

# BUSINESS OPPORTUNITY

# FOR MARINA, LODGING, RETAIL, RECREATION AND OTHER SERVICES AT INDIAN CREEK 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 Indian Creek Recreation Area 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 are required:

**Required Services for the New Concession Contract**

1. Seasonal boat slips
2. Housekeeping cabins and lodging units for daily rental
3. A resort store offering grocery items, ice, fishing and camping supplies, fishing and park entrance licenses, basic first-aid supplies, and miscellaneous items
4. Fishing bait and tackle sales
5. Fishing license sales
6. Boat fuel, oil and grease sales

## PROPOSED MINIMUM FRANCHISE FEE

4 percent of annual gross receipts

## REQUIRED MINIMUM REPAIR AND MAINTENANCE RESERVE

2 percent of annual gross receipts

## TERM OF DRAFT CONTRACT

10 years

The South Dakota Division of Parks and Recreation has determined that while there is currently a valid buyer, no preferred Offeror for this Draft Concession Agreement exists. This solicitation for commercial services is fully competitive.

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# INTRODUCTION

The South Dakota Department of Game, Fish and Parks ("the State") seeks proposals for concession operations at Indian Creek 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 Jerry and Janice Frailing, the concessionaire under the existing contract (“Existing Lease”).

The purpose 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 its serves.

The South Dakota State Park system includes 12 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.

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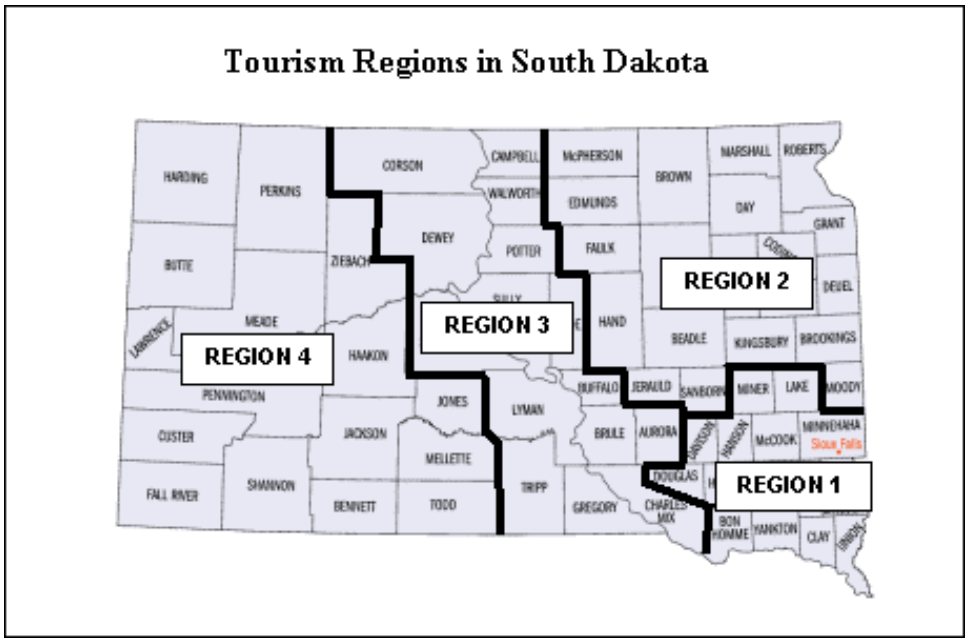
# MARKET AREA OVERVIEW

## 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.
- **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. Snake Creek Recreation Area falls along the northern end of Charles Mix County, just 20 miles west of Platte.
- **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**



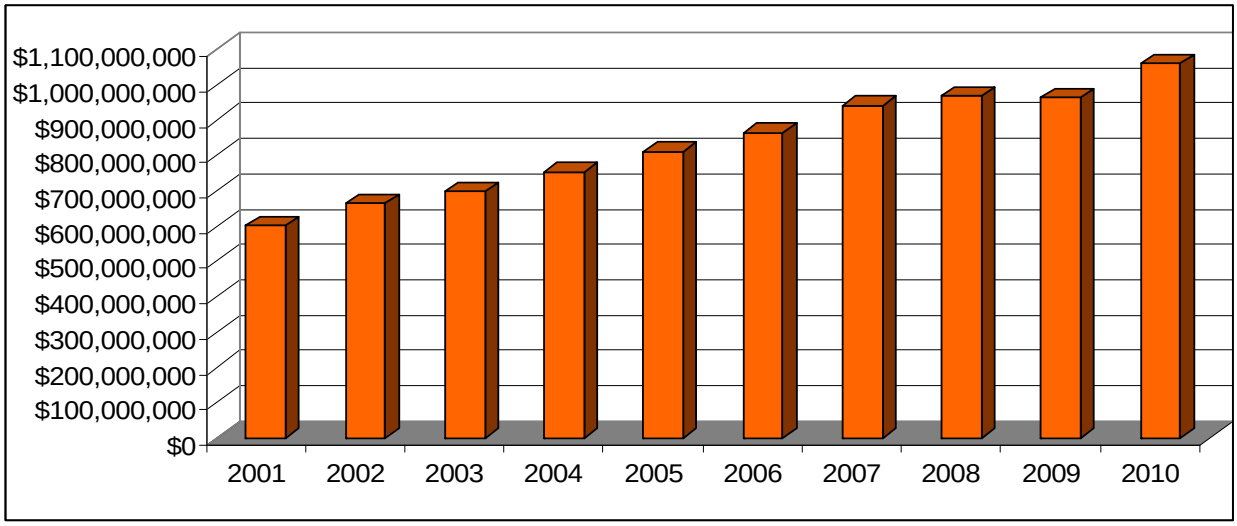

*Source: South Dakota Office of Tourism*

## 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.

The South Dakota Office of Tourism regularly commissions 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.

**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 Black Hills, Badlands & Lakes region accounts for the largest proportion of visitor spending in South Dakota (Exhibit 4). The regional compound annual growth rate ("CAGR") ranged between three and six percent from 2001 through 2010. The Black Hills, Badlands & Lakes and the Glacial Lakes & Prairies regions have rebounded notably since September 11, 2001, primarily due to the increased visitation to national forests, parks, monuments and other destination points in the former and increased fishing, camping and hunting (most notably pheasant) in the latter.

**Exhibit 4 Regional Visitor Spending 1996 to 2006 (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 Indian Creek Marina is a combination of a multi-state regional market, statewide market, and the local market consisting of the City of Mobridge, Walworth and Campbell counties. It is anticipated that each segment will play a significant role in the overall business plan for this concession opportunity.

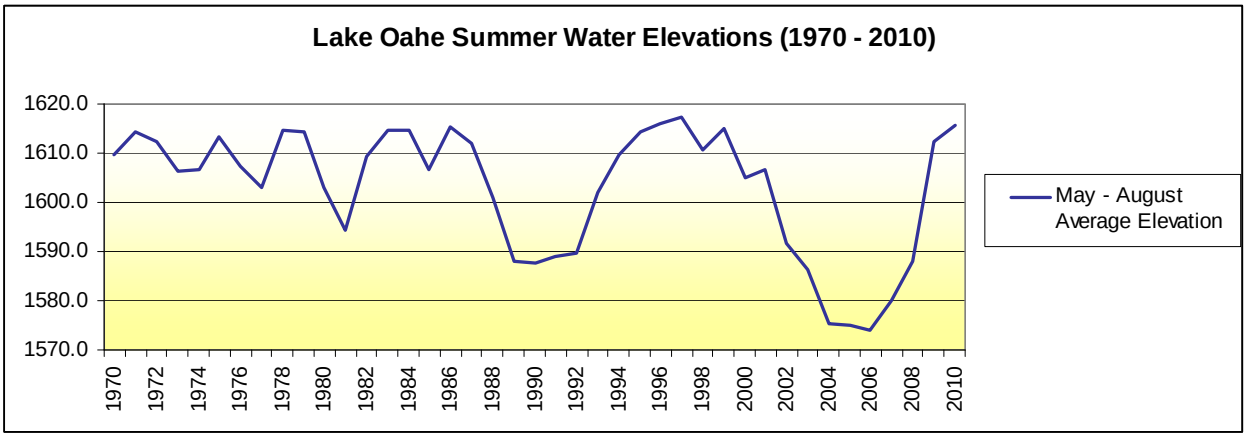
Lake Oahe is the largest of the four major reservoirs on the Missouri River and is the largest body of water in South Dakota. Lake Oahe extends from just north of Pierre to Garrison Dam 231 miles north hear Bismarck, ND. The lake is encompassed by 2250 miles of shoreline. With its vastness, beauty, water quality, and central location, it is a natural for outdoor recreation in South Dakota.

Bridge City Marina is situated in a protected bay and allows calm-water boating access from the marina immediately to the main reservoir. The concession is located between the park's two campgrounds and is in close vicinity to the two state boat ramps and fish cleaning station. A floating-tire breakwater provides additional protection to the marina. Lake Oahe is most popular for its fishing, boating, and sailing with the upper portions in South Dakota providing excellent ice fishing opportunities.

Historically, the water elevations on the lake have fluctuated with wet and dry weather cycles. During a drought cycle, lower water levels result in limited lake access. However, at the lake's lowest historical elevation of 1558' MSL, the Indian Creek West Boat Ramp was one of only three in operation on Lake Oahe in South Dakota. Lower water levels also result in less water surface area which has impacted the Marina at Indian Creek in the past in terms of total number of slips provided.

Exhibit 5 illustrates the historical average summer water elevations on Lake Oahe since 1970.

**Exhibit 5 Lake Oahe Average Summer Water Elevations (Past 40 Years)**




*Source: State of South Dakota*

The local market area around Indian Creek Recreation Area is known as the upper Lake Oahe region. Outstanding recreational opportunities such as hunting, fishing, boating, swimming, camping and trails are some of the predominate draws to this area. Other areas of importance include:

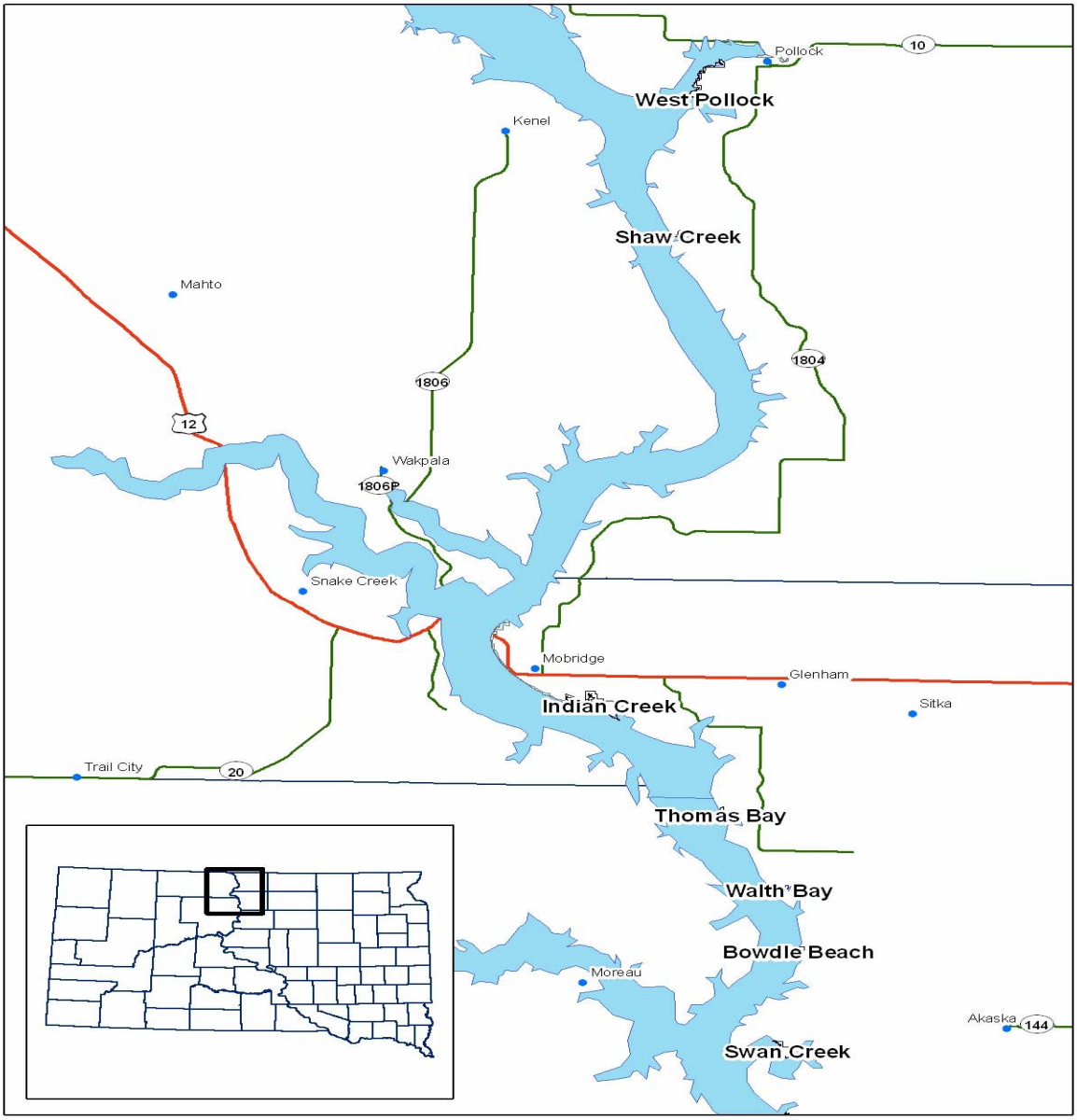
**Recreation Areas**

- Revheim Bay Recreation Area
- West Pollock Recreation Area

**Lakeside Use Areas**

- Walth Bay Lakeside Use Area
- Thomas Bay Lakeside Use Area

**Exhibit 6 Upper Lake Oahe**



*Source: State of South Dakota*

# PARK OVERVIEW

Located in the Missouri River region of South Dakota, the Indian Creek Recreation Area is a popular site providing access and recreational services to the largest body of water in South Dakota, Lake Oahe. Indian Creek/Revheim Recreation Area is 600 acres and has over five miles of shoreline. Indian Creek Recreation Area consists of the following State-owned facilities:

- 2 Multi-lane boat ramps near the concession.
- Fish cleaning station near the concession.
- 123 campsites with electricity
- 3 Comfort stations
- Dump station
- 2 camping cabins
- Playgrounds
- Hiking trails
- Picnic Shelter
- Amphitheater

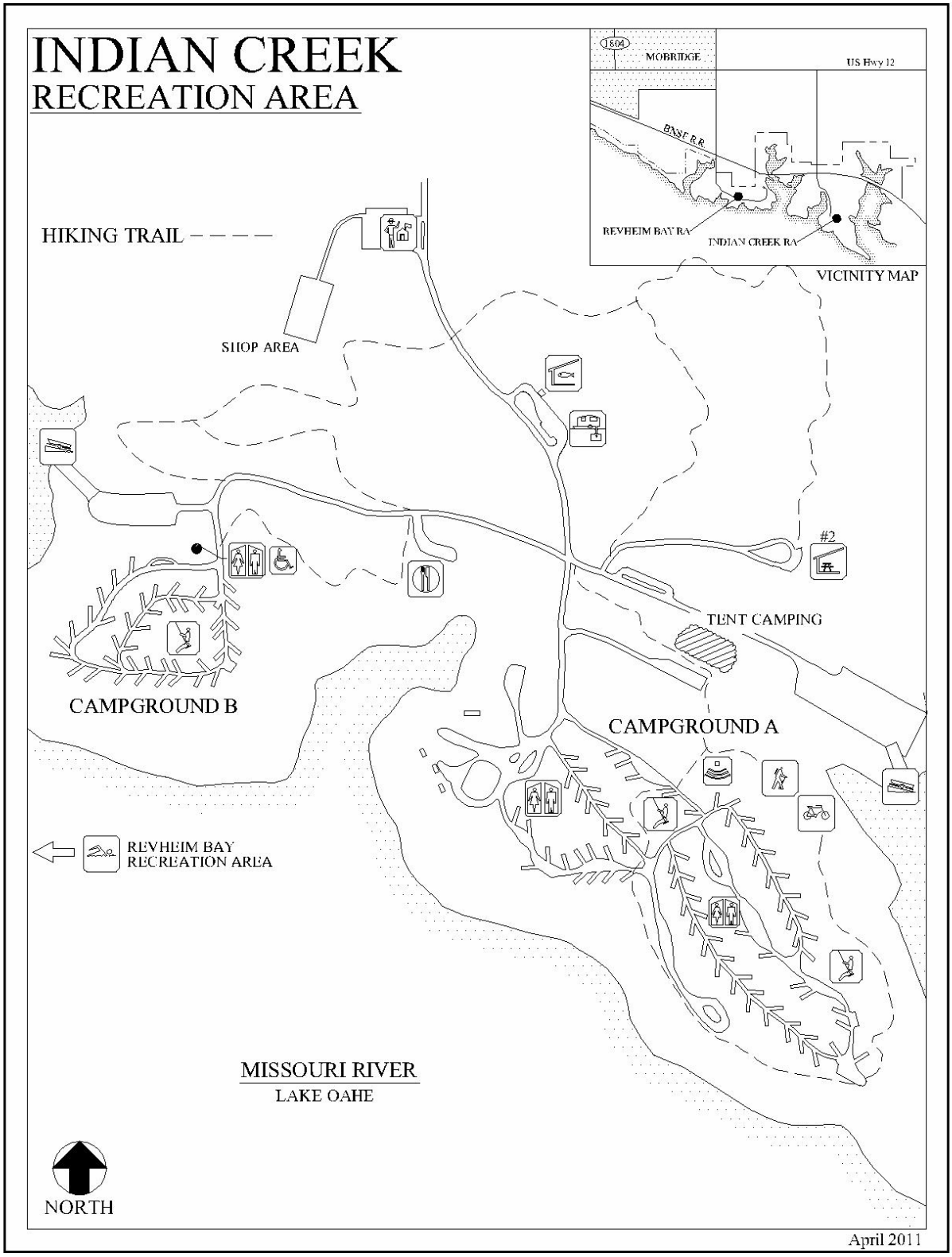
Revheim Bay Recreation Area consists of the following features

- Hiking Trails
- 4 picnic shelters
- Playground
- OHV area
- Swimming beach

West Pollock Recreation Area consists of the following features

- 29 campsites with electricity
- 2 Multi-lane boat ramps
- Fish cleaning station
- Comfort station
- Dump station
- Playground

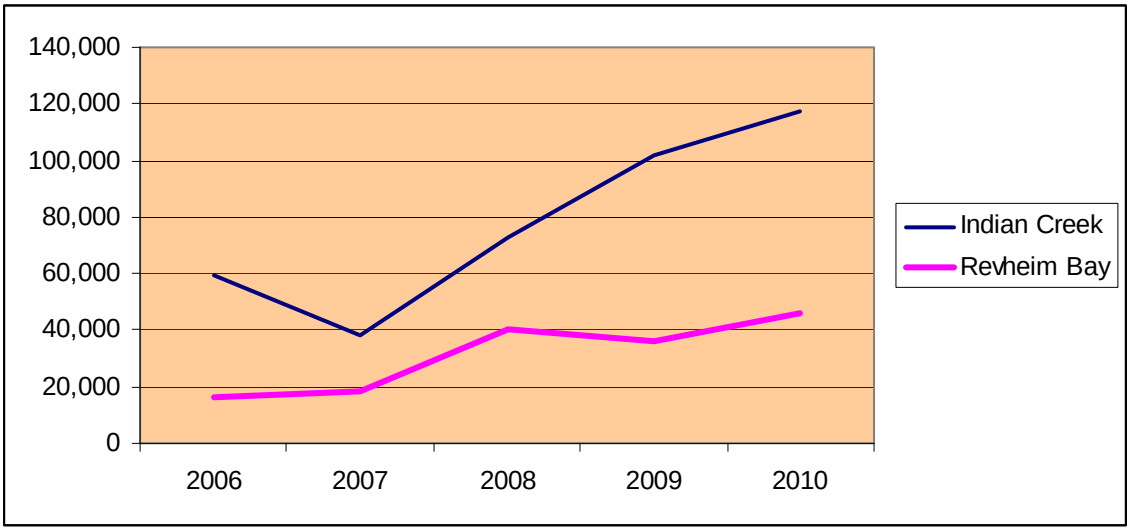
**Exhibit 7 Indian Creek Recreation Area**



*Source: State of South Dakota*

## VISITATION

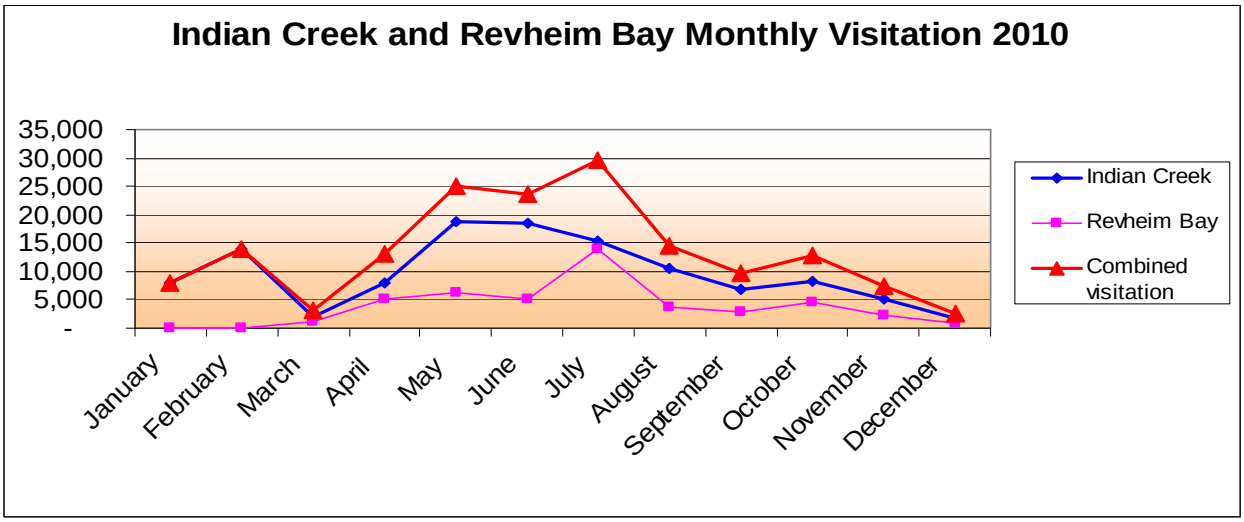
**Exhibit 8 Annual Park Visitation: 2006 - 2010**




*Source: State of South Dakota*

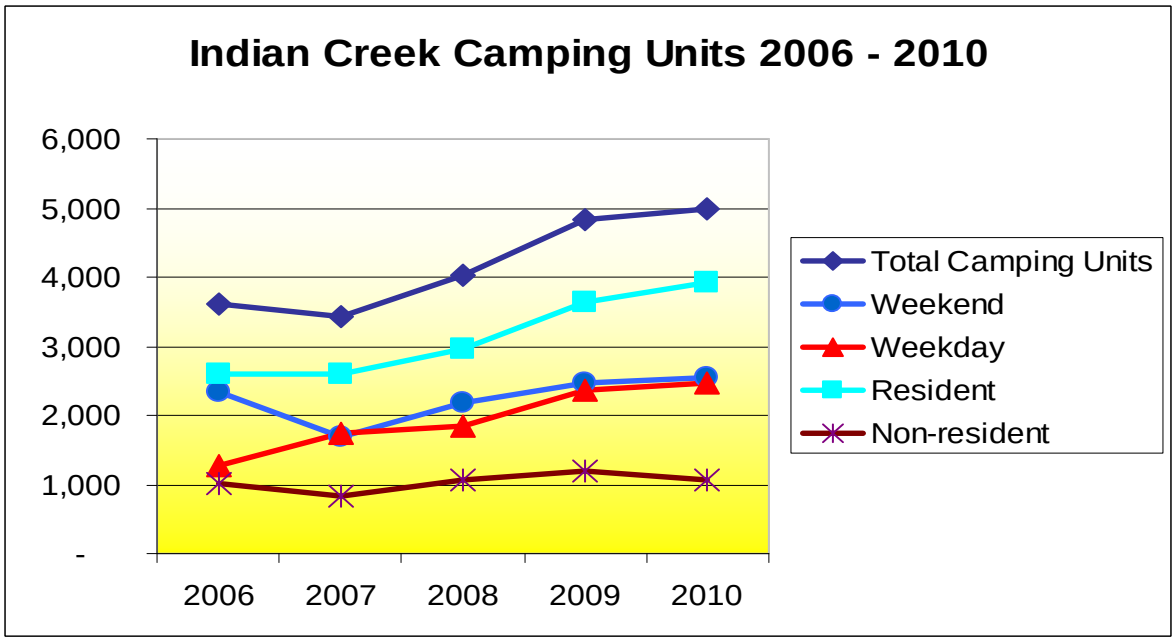
Exhibit 9 illustrates Park visitation by month for 2010 for both Indian Creek Recreation area and the immediately adjacent Revheim Bay Recreation Area. Peak months for visitation are June through August, with May and September considered shoulder months. The remaining months (October through April) are considered off-season, with low levels of visitation. Exhibit 10 displays annual camping information for Indian Creek Recreation Area for 2006 through 2010. A majority of the camping units consist of in state residents. Increases in camping have been experienced in the last two years following the rise in water levels after 2008 which is consistent with overall park visitation experienced in those years as illustrated in Exhibit 8 above.

**Exhibit 9 2010 Visitation by Month**




*Source: State of South Dakota*

**Exhibit 10 Indian Creek Recreation Area Campground Occupancy Statistics**




*Source: State of South Dakota*

# EXISTING CONCESSION OPERATION

The exhibit below provides a summary of facilities and services currently offered within the Park.

**Exhibit 11 Facility and Services Summary**

| | |
|---|---|
| **Lodging** | 3 duplex housekeeping cabins – Each has two full/twin bunk beds, kitchenette and bathroom. 4 unit motel rooms – each room has two full/twin bunk beds, kitchenette and bathroom |
| **Retail** | Convenience Store offering groceries, snacks, bait, beverages, ice, fishing tackle, boating supplies |
| **Marina** | 20 to 60 slips, dependent on water elevations |
| **Other** | Fueling Station (on the water), motel unit has Laundromat facilities |

*Source: State of South Dakota*

**Exhibit 12 Bridge City Marina C-Store/Bait Shop/Office building**

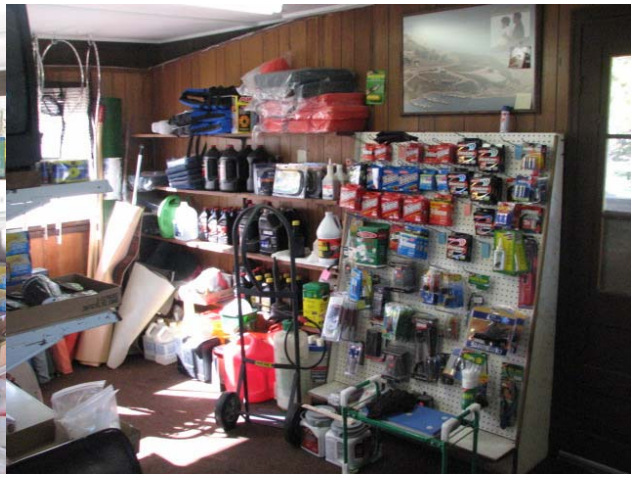


**Exhibit 13 Indian Creek Marina 4-unit Motel lodging**

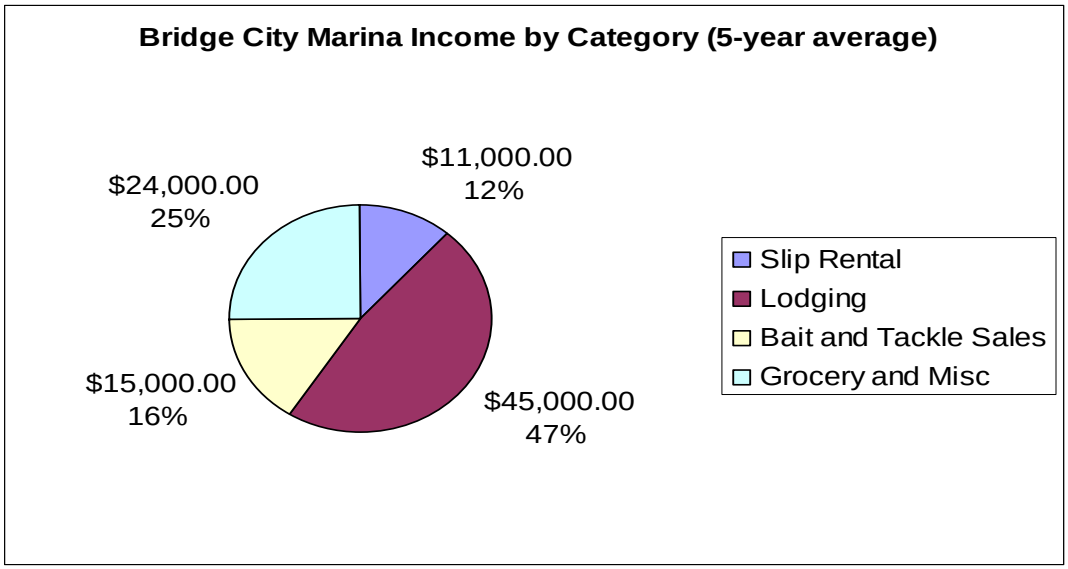
**Exhibit 14 Indian Creek Marina duplex rental cabins (3)**

**Exhibit 15 Existing Boat Slips at Indian Creek Marina**

**Exhibit 16 Aerial Photo of Indian Creek Marina area**

## Historical Contract Revenues

**Exhibit 17 Historical Revenue Information for Indian Creek Marina**




*Source: State of South Dakota*

# Future Operations

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

**Exhibit 18 Required Future Operations**

Minimum Required Accommodations, Facilities and Services

1. Seasonal rental boat slips
2. Housekeeping cabins and lodging units for daily rental.
3. A resort store offering grocery items, ice, fishing and camping supplies, fishing and park entrance licenses, basic first-aid supplies, and miscellaneous items
4. Fishing bait and tackle sales
5. Fishing license sales
6. Boat fuel, oil and grease sales

# INVESTMENT ANALYSIS

## SUMMARY OF REQUIRED INVESTMENT

The required investment of the next concessionaire is in accordance with the terms of the Purchase Agreement provided in Section 4 of this prospectus. This price was established through a mutual agreement between the current concessionaire and an interested buyer. Although a buyer for this opportunity exists, 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, personal property and inventory.

The purchase price for this property is set at $250,000.00.

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## REPAIR AND MAINTENANCE RESERVE

The draft concession agreement requires the selected concessionaire to establish a Repair and Maintenance Reserve. The Offeror is directed to Section 14 of the draft concession agreement on the terms and conditions for the Repair and Maintenance Reserve. The Repair and Maintenance Reserve for this agreement will be a minimum of 2.0 percent of gross receipts for the term of the contract.

## FRANCHISE FEE

The minimum franchise fee for this agreement is **4** percent.

## 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

## TERM AND EFFECTIVE DATE OF NEW AGREEMENT

The agreement will be for a term of ten years. The effective date of the concession agreement is estimated to be January 1, 2012. The effective date of the contract is subject to change prior to contract award if determined necessary by the State.

# SECTION II

## PROPOSAL PACKAGE INSTRUCTIONS

Proposal to Provide Marina, Lodging, Recreation, and Other Services
At Indian Creek Recreation Area

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 submitted to Douglas Hofer, Director, Division of Parks and Recreation, 523 E Capital Avenue, Joe Foss Building, Pierre, SD 57501 on or before 3:00pm Central Time on November 16, 2011. 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 bids or bids received after the deadline will be returned to the bidder. Late bids 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 6, 2011.

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 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 within 60 days of notification by the Department.

**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.

# SECTION III

# PROPOSAL PACKAGE

PROPOSAL TO PROVIDE MARINA, LODGING,

RECREATION AND OTHER SERVICES

AT INDIAN CREEK 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 visitor services, facilities, and improvements at Indian Creek Recreation Area 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 Purchase 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 descrided 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 concession operation at Indian Creek 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.

**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 lodging, 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 rooms, 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.

# 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 using the Acquisition and Startup Cost form included at the end of this section and on the Excel spreadsheet provided in the appendix. 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**

Demonstrate that your proposal is financially viable. Using the format of the Excel spreadsheets provided in the appendix and following the guidelines below, provide 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. 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 Indian Creek Recreation Area; and concessionaire re-investment.

## QUESTIONS

**Question 3.1 Franchise fee**

The minimum franchise fee acceptable to the State is four percent (4%) of 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 percentage of annual gross receipts.

_____percent of annual gross receipts

**Question 3.2 Repair and Maintenance Reserve**

As outlined in the Business Opportunity section, the State believes that well maintained facilities at Indian Creek Recreation Area are an integral part of the visitor experience. The Draft Agreement specifies a Repair and Maintenance Reserve Program of at least 2.0% of annual gross receipts.

Given the State's objectives and the requirements discussed in the Business Opportunity section and clarified in Section 14 of the Draft Agreement, please elaborate on your plan for facility repair and maintenance. Your plan should include the following:

1. Brief description of the plan, including a strategy to make immediate improvements in the first year of operation
2. Preliminary observations of items to be renovated (i.e. flooring, walls, windows, access, etc.), your expected schedule, and prioritization plan
3. Estimated costs (if available)

# PART 4: OTHER CRITERIA

## STATE'S OBJECTIVES

In addition to managerial capability, financial capabilities, and franchise fee and other benefits, the State has identified the following items as being critical to the success of operations at Indian Creek Recreation Area

- Sales and Marketing
- Other facilities and services offered

## QUESTIONS

**Question 4.1 Sales and Marketing**

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 Lake Oahe with its abundance of natural beauty and recreational opportunity, is poised to grow 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 Indian Creek Recreation Area 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 4.2 Other Facilities and Services Offered**

Please describe any additional facilities and services that you propose that will expand, enhance and improve the visitor experience at Indian Creek Recreation Area.

# SAMPLE INCOME STATEMENT

## Refer to Part 2: Question 2.5 Prospective financial statements

**Company Name**

**Location** **Spring Creek Recreation Area**

**Prospective Income Statement**

| | Year 1 | % | Year 2 | % | Year 3 | % | Year 4 | % | Year 5 |
|---|---|---|---|---|---|---|---|---|---|
| **Gross Revenue** | | | | | | | | | |
| Lodging | | | | | | | | | |
| Food and Beverage | | | | | | | | | |
| Retail | | | | | | | | | |
| Marina | | | | | | | | | |
| Other | | | | | | | | | |
| **Total Gross Revenue** | 0 | | 0 | | 0 | | 0 | | 0 |
| **Total Gross Receipts (if Different)** | | | | | | | | | |
| **Cost of Sales** | | | | | | | | | |
| Lodging | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Food and Beverage | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Retail | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| **Total Cost of Sales** | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 |
| **Gross Profit** | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 |
| **Direct Expenses** | | | | | | | | | |
| *Lodging* | | | | | | | | | |
| Wages | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Taxes and Benefits | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other Direct (specify line items in assumptions) | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| *Food and Beverage* | | | | | | | | | |
| Wages | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Taxes and Benefits | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other Direct (specify line items in assumptions) | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| *Retail* | | | | | | | | | |
| Wages | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Taxes and Benefits | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other Direct (specify line items in assumptions) | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| *Marina* | | | | | | | | | |
| Wages | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Taxes and Benefits | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other Direct (specify line items in assumptions) | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| *Other* | | | | | | | | | |
| Wages | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Taxes and Benefits | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Other Direct (specify line items in assumptions) | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| **Total Direct Expenses** | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 |
| **Undistributed Expenses** | | | | | | | | | |
| Administrative and General-Payroll, Taxes and Benefits | | #DIV/0! | | #DIV/0! | 0 | #DIV/0! | | #DIV/0! | |
| Administrative and General-Other | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Marketing | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Repair and Maintenance | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Utilities | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Management Fee | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| **Total Undistributed** | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 | #DIV/0! | 0 |
| **Fixed Expenses** | | | | | | | | | |
| Property Taxes | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Insurance | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Franchise Fees | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Repairs and Maintenance Reserve | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Capital Lease | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |
| Personal Property Replacement | | | | | | | | | |
| Other | | #DIV/0! | | #DIV/0! | | #DIV/0! | | #DIV/0! | |

# CASH FLOW SAMPLE

## Refer to Part 2: Question 2.5 Prospective financial statements

**Company Name**

**CONCID** **Spring Creek Recreation Area**

**Prospective Cash Flow Statement**

| **Operating Activities** | **2008** | **2009** | **2010** | **2011** | **2012** | **2013** |
|---|---|---|---|---|---|---|
| Net Income | | | | | | |
| Adjustment to Reconcile Cash Flow | | | | | | |
| Depreciation | | | | | | |
| Amortization | | | | | | |
| Gain/Loss on Sale of Fixed Assets | | | | | | |
| Change in working capital | | | | | | |
| Other (describe) | | | | | | |
| **Net Cash Provided by Operating Activities** | | - | - | - | - | - |
| **Financing Activities** | | | | | | |
| Dividend | | | | | | |
| Notes Payable | | | | | | |
| Other (describe) | | | | | | |
| **Net Cash Used in Financing Activities** | | - | - | - | - | - |
| **Investment Activities** | | | | | | |
| Purchase of Possessory Interest | | | | | | |
| Creation/Acquisition of New Possessory Interest | | | | | | |
| Proceeds from sale of Possessory Interest | | | | | | |
| Proceeds from Sale of Personal Property and Inventory | | | | | | |
| Other (describe) | | | | | | |
| **Net cash used in investing activities** | - | - | - | - | - | - |
| **Total Cash Flow** | - | - | - | - | - | - |
| Cash begining of year | | | | | | |
| Cash end of year | | | | | | |

# MARINA PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between Bridge City Bait, Taxidermy & Marina, Inc. and Jerry Frailing and Janice Frailing, its principal shareholders of 419 5th Ave. West, Mobridge, South Dakota 57601. here after collectively and jointly referred to as "Seller" and

referred to as "Buyer".

CONVEYANCE In consideration of the payments made herein and to be made herein, Seller hereby covenants and conveys and assures to the Buyer, all inventory, personal property, fixtures, equipment, concession lease and supplies of the Marina business of Sellers except those assets specifically excluded as identified on EXHIBIT A.

In addition, Seller agrees to convey and assign to Buyer all licenses, franchises, easements, attachment agreements, permits, rights of way agreements, leases and all other operating agreements used, or connected in anyway to the operation of the business described herein.

PAYMENTS. In consideration of the purchase of the real estate and personal property heretofore described, the Buyer does agree to pay to the Seller the full sum of $250,000.00 which shall be allocated as hereinafter described, which sum is to be paid as follows:

1. Upon execution of this agreement, the sum of $1000.00 shall be deposited in the Trust Account of Cain Law Office to be distributed as set forth herein.

2. At closing, the balance of the purchase price shall be paid to Sellers.

POSSESSION. Possession shall be delivered to Buyer and Buyer shall have possession of the described real and personal property and the rents and profits thereof from and after date of closing as herein set forth.

INVENTORY. As part of this transaction, Buyer shall acquire the inventory of the Business which exists as of closing date, provided however, Seller agrees to maintain the inventory at close to its current levels, except bait on hand. It is understood that this is a seasonal business and it is anticipated that the business will be closed at the time of closing.

CLOSING DATE. Closing shall occur on or before December 31, 2011.

TAXES AND ASSESSMENTS. It is understood and agreed that any real estate taxes for 2011 payable in 2012 and prior taxes shall be paid by Seller and the 2012 real estate taxes shall be the obligation of Buyer.

DEED AND TITLE. At closing Seller shall deliver to Buyer a Bill of Sale to all of the personal property items listed herein and shall also execute all documents necessary to transfer the concession lease and other licenses of the business being conveyed.

SELLER'S REPRESENTATIONS AND WARRANTIES. Seller represents and warrants the following;

a. That Seller has all requisite power, authority and capacity to enter into this agreement and perform the obligations hereunder, and that the execution and performance of this agreement by Seller in compliance with the provisions hereof does not violate any provisions of law applicable to Seller and does not conflict with or constitute a default under the terms of any agreement of which Seller is a party.

b. That as of the date of transfer of possession, Seller shall own all of the assets to be acquired by Buyer, and at the transfer of possession all such assets shall be free and clear of all claims, liens, security interests or encumbrances whatsoever, and at the transfer of possession, Seller shall have the full right to transfer the same free and clear of any claims, liens, security interests or encumbrances.

c. That there is no litigation, proceeding or investigation pending or, to the knowledge of Seller, threatened against Seller which would prevent consummation of the transaction contemplated by this agreement or the transfer of title to the assets of the business or which arises from Seller's ownership or operation of the business being purchased hereunder.

d. That Buyer is assuming no obligation of Seller.

e. From the date hereof until the Closing Date, the Seller's business will be conducted in the usual and ordinary course, the character of the business will not be changed and Seller will use its best efforts to preserve for Buyers the existing relationships with employees, suppliers, customers and others having business relations with Seller.

f. Seller has not received any notice from any federal, state or local agency of any violation of any statute, rule or regulation and Seller warrants there is no condition at or about any of its premises which would constitute a violation of any such statute, rule or regulations by the owner of any of its premises or constitute a basis for the issuance of any such violation against the owner of any of its premises, except for the need to replace flotation on docks which will be completed by Seller prior to June 1, 2012.

g. Seller warrants and represents that the building, electrical, and plumbing equipment and the personal property equipment described herein are in good working order and shall be performing the functions for which intended on date of closing and that the premises comply with all federal, state and municipal laws and regulations.

REPAIRS TO BE COMPLETED BY SELLER It agreed that prior to June 1, 2012, Seller at Seller's sole costs shall replace flotation under the docks at the Marina to comply with the inspection mandate performed by the South Dakota Department of Game Fish and Parks.

CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CONSUMMATE THE TRANSACTION.

The obligations of Buyer to purchase the assets under this agreement are subject to the satisfaction, at or before the closing, of all the conditions set out below in this Section. Buyer may waive any or all of these conditions in whole or in part.

A. All representations and warranties by Seller contained in this agreement shall be true on and as of the closing as though such representations and warranties were made on and as of that date. Seller shall further have performed and complied with all covenants and agreements, satisfied all conditions that it is required by this agreement to perform, comply with or satisfy before or at the closing.

B. No materially adverse change shall have occurred in the conduct of the operation of the business since the date of execution of this instrument.

C. Buyer shall have received approval of a new Concession Lease from the South Dakota Game Fish and Parks on the Marina Property.

ALLOCATION OF PURCHASE PRICE It is agreed that the purchase price of the assets owned by Bridge City Bait, Taxidermy & Marina, Inc. shall be allocated as follows:

| | |
|---|---|
| Furniture Equipment, tools and supplies | $64,000.00 |
| Goodwill | $20,500.00 |
| Inventory | $ 5,500.00 |

It is agreed that the purchase price of the assets owned by Jerry and Janice Frailing, individually shall be allocated as follows:

| | |
|---|---|
| Docks | $ 30,000.00 |
| Cabins and Buildings | $125,000.00 |
| Goodwill | $ 5,000.00 |

FICTITIOUS NAME It is further agreed that in the event Buyer wishes to continue the business being sold to them herein, under the name and style of "Bridge City Marina", the Seller does hereby give and grant to the Buyer the privilege of conducting said business under said name, provided Seller file a Fictitious Name Registration with the State of South Dakota.

DESTRUCTION OF PREMISES. Seller assumes all risk of destruction, loss or damage due to fire, storm, flood or other casualty of the business and their assets up to the time of closing. In case of any such destruction, loss or damage, Buyer, at its option, may (a) terminate this agreement and receive back from Seller the payment referred to above and neither party shall have any further obligations to the other, or (b) complete the transactions contemplated hereunder with the price to be paid by Buyer to Seller adjusted in proportion to the loss or damage.

DEFAULT. In the event that either party fails to materially perform any of the terms and conditions of this agreement on its part to be performed as hereinabove provided for, or if any of its representations or warranties prove to be materially incorrect or false, the other party, at its option, may be entitled to damages for such default as determined by a court of law, and/or be entitled to specific performance on the part of the defaulting party. The parties shall also have such other rights and remedies as may be provided at law or in equity. All of such remedies shall be cumulative.

INDEMNIFICATION. Buyer and Seller each agree to indemnify and hold harmless the other against, and in respect of, any and all claims, losses, expenses, costs, obligations and liabilities (including a reasonable attorney fee, which the parties agree is a reasonable cost) either party may incur to third parties by reason of the other party's errors or omissions occurring prior to or subsequent to closing and also for the breach of or failure to perform any of its warranties, commitments or covenants contained in this agreement.

EXECUTION OF DOCUMENTS. All parties hereto agree to execute (at or subsequent to closing) any and all documents necessary to effectuate the terms and conditions of this agreement.

CHOICE OF LAW. The parties hereto agree that South Dakota law shall govern this transaction.

MERGER CLAUSE. This Agreement constitutes the entire agreement between the parties to which all prior and contemporaneous negotiations, commitments and representations with respect to the subject matter hereof are merged and the parties hereto acknowledge that there are no other oral or written understandings or agreements between them relating to the subject matter hereof. This Agreement may be amended only in writing and duly signed by all parties.

TIME OF THE ESSENCE It is mutually agreed by and between the parties hereto that time shall be of the essence with respect to this Purchase Agreement and that all of the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and personal representatives of the respective parties hereto.

ASSIGNMENT. It is agreed that Buyer may assign this agreement to a corporation formed by Buyer.

REPRESENTATION. It is acknowledged and agreed that Cain Law Office, P.C. shall represent only the Seller in this transaction.

COSTS. Unless otherwise specified the costs of closing shall be allocated between the parties as follows:

| | Seller | Buyer |
|---|---|---|
| Leases and License application and transfer fees | 100% | |
| Survey Costs (if applicable) | | 100% |
| Buyer's Loan Closing costs (if any) | | 100% |
| Bill of Sale preparation fee | 100% | |
| Closing Legal Fees | 50% | 50% |
| Purchase Agreement preparation fee | 50% | 50% |
| Seller's other legal fees (if any) | 100% | |
| Buyer's other legal fees (if any) | | 100% |

DEFAULT. It is agreed by and between the parties hereto that in the event Buyer does not purchase the property under the terms and conditions set forth herein, the down payment heretofore paid by Buyer in escrow shall be applied to the fees and costs associated with the preparation of this agreement and Seller may keep and retain the balance as liquidated damages and the remainder of this purchase agreement shall be null and void, or Seller may seek any other remedy allowed by law. Said escrow agent shall have no obligations to either party upon delivery of said funds as stated herein. It is further expressly understood and agreed that should Cain Law Office, P.C. or their employees be made a defendant in any suit by any of the parties to this Agreement or by their assigns or successors or by any other person for any matter arising in connection with this Agreement, the costs of said suits, including attorney fees, shall be borne jointly and severally by the contracting parties, who hereby agree to pay the same upon demand by Cain Law Office, P.C.

**IN WITNESS WHEREOF**, all parties have hereunto set their hands and seals the day and year hereinabove written.

EXHIBIT A
ASSETS EXCLUDED FROM THE SALE

- Large wooden fish
- Jerry's Lund boat and accessories, motor, trailer and personal fishing tackle
- Pontoon and trailer
- 4 wheeler ATV
- Hand cart
- shop vac
- Ford diesel Truck
- Ford Expedition vehicle
- Large Yellow Rose in yard
- Real estate and personal property thereon located in the City of Mobridge, South Dakota
-Chainsaw
-Blower
-Power washer
-Ranger pickup
-Handmade trailer
-2 stoves
-1 washer & dryer
-Taxidermy inventory, tools and supplies
-little boat motor
-glass case
-water skis
-wood pile
-ice shack
-video game machine

**CONCESSION AGREEMENT**
**BRIDGE CITY MARINA**

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,** Indian Creek 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 areas of Indian Creek Recreation Area operated by a concessionaire as a resort 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 resort concession in portions of Indian Creek Recreation Area and be a concessionaire, as defined in the Rules.

**Now therefore,** for the purposes of carrying out concession operations in part of the Park 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, 2022.

**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 Indian 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) “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 Resort, 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, gasoline sales, hunting and fishing license sales (not including agent fees), and park entrance license sales 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 Resort, revenues of Sub-SubConcessionaires, commissions earned on leases or agreements between SubConcessionaires and other persons or companies operating in the Resort, 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 Indian Creek 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) “Resort” 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 management of Indian Creek 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 Resort, subject to the Performance Standards for the Operation and Maintenance of Indian Creek Recreation Area Resort attached to the Agreement as Exhibit B.

Minimum Required Accommodations, Facilities and Services

1. Boat slips
2. Housekeeping cabins and lodge units for daily rental.
3. A resort store offering grocery items, ice, fishing and camping supplies, fishing and park entrance licenses, basic first-aid supplies, and miscellaneous items
4. Fishing bait and tackle sales
5. Fishing license sales
6. Boat fuel, oil and grease sales

(b) The Department authorizes the Concessionaire to provide only the following additional accommodations, facilities and services within the Resort. 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. Restaurant and food service
2. Additional rental lodging (as approved by the Department).
3. Hunting license and supply sales.
4. Licensed off-sale beer sales between 6 a.m. and 11:00 pm.
5. Fishing guide service
6. Rental boats and motors
7. Firewood sales with written permission from the Department.
8. Dry-dock boat and trailer storage in Department-approved locations only

(c) The Department retains the right to authorize additional accommodations, facilities, services and merchandise within the Park. 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 Resort 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. All rates and prices for accommodations, facilities, services and merchandise shall be clearly posted or marked.

(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 these 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 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.

(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 Resort, 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 Resort 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 Government Facilities and Concessionaire Facilities identified in Exhibit A2 and A-3 and is thoroughly acquainted with 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 Resort 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 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.

(f) The Department shall have the right to enter the Resort, 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 Resort in compliance with the terms and conditions of this Agreement including the performance standards for the Operation and Maintenance of the Resort 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 Resort with the exception of the fish cleaning station, which will be the responsibility of the Department. The Concessionaire shall perform such work in accordance with the performance standards contained in Exhibit B. Concessionaire shall also be responsible for keeping the Resort 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 Resort 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 Resort 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 Resort 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 Resort, the use or occupation thereof, or with respect to Concessionaire's business and operations.

(f) Concessionaire shall occupy the Resort as of the Effective Date and thereafter will continuously use the Resort 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 Resort 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 Resort, 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, Indian Creek Recreation Area, and/or the Resort 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 Commission, 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 Resort only. Concessionaire shall not offer for sale outside of the Resort, 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 utilities in the Resort, including but not limited to water, sewer, electricity and garbage disposal. Maintenance responsibilities of Concessionaire for Department-owned utility systems within the Resort 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 Resort segregated by profit center under generally accepted accounting principles that are customary for resort 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 separated for the operation of the Resort 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.

(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 Resort 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) In addition to the accounting records mentioned above, Concessionaire shall provide to the Department an annual lodging utilization report which shall include information relating to available rooms, occupied rooms, resulting levels of occupancy, revenues and resulting average daily rates (ADR) for each lodging property. These reports shall also comparisons with the previous year. These reports shall be submitted to the Department by May 1 for the previous year.

(g) From time to time, the Department may require Concessionaire to submit other reports and data regarding the Resort, Concessionaire's performance under this Agreement or otherwise, including but not limited to, operational information and capital progress reports.

(h) 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 (i) below.

(i) 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 Resort, as necessary for any subsequent concessionaire to operate the Resort, or for other legislative or administrative purposes.

**Section 10. Fees**

Franchise 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. Payments shall be made no later than January 30th, for the final calendar quarter of the proceeding calendar year; July 30th, for the first two quarters of the current year; and October 30th for the third calendar quarter of the current 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. Remedies, Termination or Expiration of the Agreement**

(a) Procedures upon termination or expiration of this Agreement shall be in accordance with ARSD 41:13.

(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 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.

(d) In the event of termination of this Agreement for default, the provisions of this Section apply.

(e) To avoid interruption of service at the Resort upon expiration or termination of this Agreement, Concessionaire shall, at the option of the Department:

(i) 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

(ii) 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.

(iii) 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.

(f) The Department shall have a right of offset against amounts owed the Department for 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 12. 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 of offset against amounts owed the Department for all amounts owed by the Department for any Possessory Interests purchased by the Department.

**Section 13. 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 Resort, 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) Workman’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 Workman’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 through 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 14. 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 two percent (2%) of the annual Gross 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 existing Concessionaire Facilities and Government Facilities included in this Agreement.

(i) Of the 2%, 1.5% may be expended by Concessionaire for repair and maintenance of Concessionaire Facilities and Government 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 0.5%, plus any amounts not expended under Section 14 (b) (i) shall be administered and utilized for maintenance, repair and renovation of Concessionaire Facilities and Government 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 or Government 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, 2012, 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 the annual repair and maintenance work completed. This report is due by January 1 of each year, unless an extension of time was granted.

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.

(f) 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, Concessionaire shall be compensated by the Department in the amount of the deficit.

(g) 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 and un-recovered by application of the annual Repair and Maintenance Reserve.

## Section 15. 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 Resort 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 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.

(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 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 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 the president on behalf of Concessionaire, or such authorized designees as either party may from time to time designate in writing.

| Department | Concessionaire |
|---|---|
| Director<br>Division of Parks & Recreation<br>523 East Capitol<br>Pierre, South Dakota 57501 | |

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 16. 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 Resort 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 17. Park Entrance License Provisions.**

(a) All individuals entering or utilizing the Resort 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 Resort.

(b) Concessionaire shall take reasonable steps to ensure that its patrons, employees, agents, and volunteers comply with the park entrance license fee requirements.

**Section 18. Resident Use**

(a) 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 19. Procedure for Assignment, Sale or Transfer of Agreement**

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

**Section 20. Corps of Engineers Lease**

That portion of the Leased Area lying below 1607.5 foot mean sea level is leased to the Department from the U.S. Army Corps of Engineers. All agreements and leases including this agreement and any granted thereunder are subject to the terms and conditions of Lease No. DACW45-1-08-8100 between the U.S. Army Corps of Engineers and the

Department of Game, Fish and Parks, a copy of which is provided to Concessionaire. In the event of any conflict between the terms of this Agreement and the U.S. Army Corps of Engineers lease, the U.S. Army Corps of Engineers Lease will prevail. In the event either Lease No. DACW45-1-08-8100 or this agreement are amended, all parties that are signatories to this Agreement will be notified.

END OF AGREEMENT TEXT

The above and foregoing CONCESSION AGREEMENT was approved by the Game, Fish and Parks Commission on _____, ___, 2011 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 _____, 2011.

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 (Resort) Maps for areas 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

Exhibit B

PERFORMANCE STANDARDS FOR THE OPERATIONS AND MAINTENANCE OF THE INDIAN CREEK RECREATION AREA RESORT

Exhibit C

TRANSITION TO A NEW CONCESSIONAIRE

Exhibit D

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

**EXHIBIT A-1**
**Bridge City Lease Area**

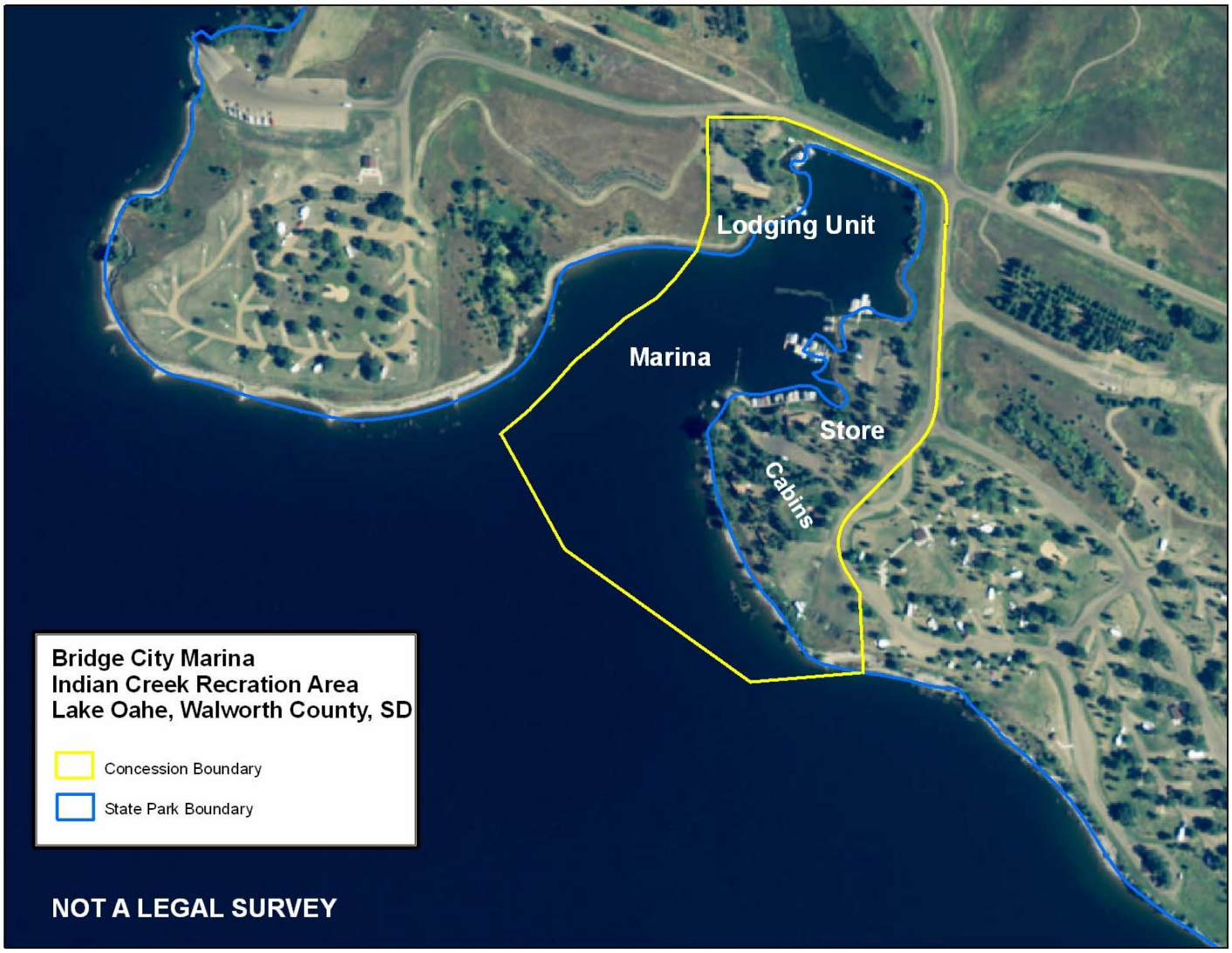

**EXHIBIT A-2**

List of Concessionaire Facilities and associated possessory interest

| | | | |
|---|---|---|---|
| **CONCESSIONAIRE IMPROVEMENT AUTHORIZATION AND DETERMINATION OF POSESSORY INTEREST**<br><br>**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 | Description | | Possessory Interest at Agreement Effective Date |
| | Cabins | | |
| | Lodge units | | |
| | Bait shop | | |
| | Docks | | |
| | Picnic shelter | | |
| | | | |
| | | | |
| | | | |
| | | | |
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| | | | |
| | | | |

**EXHIBIT A-3**

List of Buildings and Structures Constituting
Government Facilities Assigned to the Concessionaire

| **BUILDINGS AND STRUCTURES CONSTITUTING GOVERNMENT FACILITIES** | |
|---|---|
| **Concessionaire:**<br>Indian Creek Recreation Area Resort Company | **Concession Agreement (Effective Date):** |

| **Buildings and Structures** | | |
|---|---|---|
| **Fac. ID No.** | | **Description** |
| | | |
| | | |
| | | |
| | | |
| | | Parking lots and roads |
| | | Underground Utilities |
| | | |
| | | |
| | | |
| | | |
| | |

## EXHIBIT B

## PERFORMANCE STANDARDS FOR THE OPERATIONS AND MAINTENANCE OF THE INDIAN CREEK RECREATION AREA RESORT

The following Performance Standards ("Standards") of the operation and maintenance of the Resort 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 Resort, 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 Resort. Use of the assigned area by the Concessionaire is limited to operation of the Resort 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 Resort boundaries. The Concessionaire shall not restrict access to public waters along the frontage of the Resort boundaries.

### Section 2. OPERATIONS

#### (a) Dates of Operation

(i) All Resort facilities and services must be open and available to the public. The minimum season for all locations and services that shall be considered is daily operation according to the following dates. Concessionaire shall have access to the Resort at all times during the term of the Agreement.

| Minimum Operating Dates |
|---|
| |

| Facility | Open | Close |
|---|---|---|
| | | |
| Marina | May 1 | October 31 |
| | | |
| Convenience Store | May 1 | October 31 |
| | | |
| Lodging | May 1 | October 31 |
| | | |

(ii) 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 Resort 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. All dates of operation must be posted on the premises.

**(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 |
| | | | |
| | Convenience Store | 7:00 am | 8:00pm |
| | | | |
| | | | |

(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 Resort. The Concessionaire shall be responsible for maintenance of the electrical services within the Resort. 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 Resort. The Concessionaire shall be responsible for maintenance of the water systems that serve the Resort. 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 Concessionaire shall be responsible for activating wastewater disposal service with the wastewater disposal provider and paying directly to the provider all wastewater disposal costs attributable to usage of the Resort. The Concessionaire shall be responsible for maintenance of the sanitary sewer collection system. All sanitary sewer collection 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.

The Concessionaire shall ensure that any septic tank within the Resort is pumped as needed and functions properly to ensure the proper operation of the sewer system.

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.

(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. The Park will provide one garbage receptacle for the fish cleaning station, and be responsible for emptying it.

(iv) Television - The Concessionaire shall provide television services to all lodging units within the Resort. Expenses for repairs and maintenance of the television signal delivery systems are the responsibility of the Concessionaire.

(v) 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 Resort, notwithstanding the Department's rights to access as specified in the Agreement.

**(e) Visitor Information**

(i) The Concessionaire shall make available and provide without charge to all patrons and Resort visitors, informational literature, safety precautions and notification of potential hazards with respect to Indian Creek Recreation Area as provided by the Department at no expense to the Concessionaire.

(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 Resort and Park Employees**

(i) All Resort employees and volunteers shall be able to effectively and courteously respond to the public to inform them of all the Resort's and Park's services, activities, and information.

(ii) The Concessionaire agrees to arrange for and allow on an annual basis Park employees to attend and be present, or as otherwise agreed to be necessary by the Concessionaire and Park Supervisor, at an orientation session scheduled and conducted by the Concessionaire to acquaint them with the resources, features and services of Indian Creek 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 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.

**(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 Resort 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 that oversee all of the Resort areas are subject to Department approval.

(ii) Each on-site resort manager must possess the necessary experience and expertise to ensure a high quality resort 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 disorderly, incompetent or unsatisfactory, the Concessionaire shall investigate the matter thoroughly, and take appropriate action to correct.

(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 Resort. The exemption shall be valid only for current employees and volunteers of the Resort while actively working at the Resort. 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 a 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 Resort. The Concessionaire shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Resort, and specifying the actions that shall be taken against employees for violating this prohibition.

**(j) Signs**

(i) The Department is responsible for providing and maintaining all traffic control signs within the Resort. The Concessionaire is responsible for providing and maintaining all other signs within the Resort. 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 Resort, 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 Resort 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 Resort 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 Resort received by the Department shall be documented and forwarded to the Concessionaire for resolution.

**(m) Pets**

Pets maintained by Resort 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 and 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 it has knowledge of that occurs involving visitors, patrons or employees. The Department shall immediately notify the Concessionaire of any accident that involves personal injury or property damage in the Resort 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) 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 in regard to 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.

**(p) 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 Concessioner 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.

**(q) 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 the 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. 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. Firewood

(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 persons of normal sensitivity might consider to be obscene, sexually oriented, profane, vulgar or demeaning.

(iv) Fireworks shall not be sold, stored or used at the Resort.

**(r) Rental Lodging**

(i) At a minimum, all cabins and lodge rooms shall provide the following amenities:

1. Beverage containers (plastic or glass)
2. Clock radio or clock
3. Towel service that correlates to the number of pillows
4. Iron and ironing board available upon request (irons must be equipped with automatic shut-offs)

(ii) All cabins and lodge rooms shall be given daily maid service if desired by guests.

(iii) Posted check in time must be no later than 4:00 p.m. and check out time must be no earlier than 11:00 a.m.

(iv) Each cabin and lodge room shall contain adequate furnishings jointly acceptable to the Department and Concessionaire.

(v) Carpets, sheets, bedspreads, pillowcases, blankets, terry and window coverings must not be frayed, faded, worn, stained, odiferous, or contain holes.

(vi) All rugs must be kept clean and free of stains and offensive odors. Carpets and rugs must be vacuumed daily if desired by the guest.

(vii) Non-smoking rooms shall be provided in accordance with hospitality industry and guest trends.

(viii) The front desk shall be available for guest services during the minimum hours of the convenience store during the minimum operating season.

(ix) Each cabin and room must be equipped with a serviced fire extinguisher. Appropriate fire exit information shall be posted in each cabin and room in accordance with South Dakota law.

(x) Each cabin and room must be equipped with a carbon monoxide and explosive gas detection device, unless room is heated by a non-combustive heating system.

(xi) Reservations shall be accepted via the phone, email, internet, and regular mail up to two years in advance.

(xii) Rates, charges, check in/check out and appropriate hotel regulations should be posted in each cabin and room.

(xiii) The Concessionaire shall comply with all applicable laws in order to maintain the required South Dakota State Department of Health lodging establishment license.

**(s) Fuel Sales**

(i) Concessionaire shall be responsible for the proper fueling of all vehicles and boats, instructing the public who wish to fuel their own vehicles on the appropriate safety measures that must be undertaken prior to fueling the vehicle.

(ii) The fuel storage tanks and dispensing systems shall be operated in accordance with applicable laws

**(t) Guide Service**

(i) Fishing Guide Service

1. Guides must possess sufficient knowledge of park resources and safety procedures.

**(u) Boat Slip Allocation Process**

(i) Near the first 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 the slip holder has materially breached its 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 last 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 41:13.

(ii) All plans and materials are subject to Department approval.

### (c) Maintenance Responsibilities-Concessionaire

Maintenance, for the purpose of this Agreement 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 Resort.

(i) Buildings and Structures – The Concessionaire shall maintain all buildings and structures, including Government Facilities, assigned to or owned by the Concessionaire. Maintenance includes, but is 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 and slips as authorized and necessary, including the Department-owned breakwater. Off-season storage of boat docks and slips shall be allowed in the locations approved by the Department. 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.

(iv) Sidewalks, Steps, Decks and Landings – The Concessionaire shall maintain all concrete, wood and gravel sidewalks, steps, decks and landings within the Resort. 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.

(v) Grounds – Mowing, weed/pest control, and maintenance of landscaping within the Resort 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. All trees shall be maintained according to generally accepted arboricultural techniques appropriate for this geographic area. All turf areas shall be established and maintained according to generally accepted turf culture appropriate to this geographic area.

(vi) 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 Resort 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.

(vii) 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.

(viii) 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.

(ix) 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.

(x) Locks – The Concessionaire shall provide the Park Supervisor with Resort facility keys necessary for security, emergency or other lawful purposes.

(xi) Winterizing Facilities – The Concessionaire is responsible for taking appropriate measures to protect all facilities for which the Concessionaire has maintenance responsibility from winter weather and to have all such protective measures accomplished by November 1st of each year, or sooner depending on weather conditions or temperature. 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 Resort including parking lots and sidewalks that serve Concessionaire facilities. The Concessionaire is responsible for marking fire hydrants, propane tanks, and other fuel storage/dispensing facilties with snow stakes/flags and for keeping snow clear around hydrants.

(xii) 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.

(xiii) Restrooms. All restrooms within Resort shall be well maintained by the Concessionaire, cleaned and restocked with paper products a minimum of two times per day, and with greater frequency during peak periods. 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.

(xiv) Fire Grates. All fire grates and fire places must be properly maintained. Outdoor fireplaces must be maintained in accordance with “Guidelines for Minimum Acceptable Safety Requirements for Outdoor Fireplaces” developed by the South Dakota Department of Agriculture, Division of Forestry document no. AG-DOF-216/89. The Park Supervisor may impose fire restrictions at any and all resort locations at any time as the result of wildfire risk assessments.

(xv) Rental Lodging: Case goods shall be well maintained and repaired to ensure a pleasant and safe guest experience. Any scratches and/or defacement of case goods shall be fixed or the piece of furniture shall be replaced prior to the room being rented. All case goods (unless historic) shall be replaced or refurbished at least once every 15 years, based on current estimated age and expected life cycle, or sooner if a furnishing does not meet facility standards. Mattresses shall be replaced every 10 years or sooner, based on estimated age if their condition warrants it. Soft goods 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 prior to

renting a rental unit. Soft goods shall be replaced every seven years or sooner if the condition warrants it.

(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 at least once every 10 years, based on current estimated age and expected life cycle, or sooner 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 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**

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(i) Roads and Parking Lot – The Department will be responsible for maintenance of roads and parking lots within the Resort. This maintenance will include necessary crack seal, pothole repair and surfacing of paved areas and necessary grading of non-paved areas. Snow Removal will be in accordance with Section 3 (d) (iii) of this Exhibit below.

(ii) Snow Removal – The Department will be responsible for snow removal necessary to maintain access to key public and administrative areas located within the Resort. 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.

## SECTION 4. INSPECTIONS AND AGREEMENT COMPLIANCE REVIEWS

### (a) Maintenance Inspections

(i) Representatives from the Department and the Resort shall conduct preventative maintenance and inspections of the Resort grounds and facilities. At minimum, at least one inspection will be held in the spring prior a week before 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 list of maintenance objectives the Department is responsible for in the Resort. 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 14 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

At such time as the Director may notify 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.

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

# 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 | |
|---|---|
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**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.