

RESOLUTION 18-10

WHEREAS, the current concessionaire at Lewis and Clark Resort located in Lewis and Clark Recreation Area, Dakota Hospitality Management, Inc., (Concessionaire) notified the Parks and Recreation Division of the South Dakota Department of Game, Fish, and Parks (GFP) of its intent to sell its assets and relinquish its rights set forth in the Amended and Restated Lewis and Clark Recreation Area Lodging Lease Agreement dated October 18, 2004, as amended; and

WHEREAS, as required by the regulations promulgated by the Game, Fish, and Parks Commission, the Department issued a prospectus on November 2, 2018 to solicit a successor concessionaire for a new ten year concession lease agreement; and

WHEREAS, since the issuance of the Prospectus for providing lodging services at Lewis and Clark Recreation Area on November 2, 2018, GFP has been engaged in the solicitation of requests for proposals for the issuance of a new concession agreement at Lewis and Clark Recreation Area (New Concession Agreement); and

WHEREAS in response to its request for proposals, GFP received one viable proposal complete with proof of financing capability from Michael and Valeri Grave President and Vice President of Lewis and Clark Lodging, LLC (Lewis and Clark Lodging); and

WHEREAS, GFP and Lewis and Clark Lodging have negotiated the terms of a New Concession Agreement for Lewis and Clark Resort which will have a term of ten years, which is to commence on December 20, 2018 and expiring on December 31, 2028; and

WHEREAS, the existing Concessionaire desires for the Amended and Restated Lewis and Clark Recreation Area Lodging Lease Agreement dated October 18, 2004, as amended, to be terminated upon the completion of the sale of its assets to Lewis and Clark Lodging and agrees to the terms and conditions set forth in the Termination Agreement; and

WHEREAS, the Parks Division of GFP has presented the New Concession Lease and the Termination Agreement to the GFP Commission for its review and approval, and the GFP Commission has reviewed the terms of said agreements with Parks Division Director Katie Ceroll and legal counsel for the Department, and finds the terms and conditions set forth in said agreements to be acceptable and wishes to execute the New Concession Agreement and the Termination Agreement in regards to the existing Concession Agreement on behalf of GFP;

NOW, THEREFORE, BE IT RESOLVED, that the GFP Commission does hereby approve and accept the terms and conditions set forth in the New Concession Agreement (a copy of which said agreement is attached hereto and incorporated herein by this reference) to be entered into by and between GFP and Lewis and Clark Lodging;

BE IT FURTHER RESOLVED that the GFP Commission does hereby approve and accept the terms and conditions set forth in the Termination Agreement (a copy of which said agreement is attached hereto and incorporated herein by this reference) to be executed by GFP and the existing Concessionaire;

BE IT FURTHER RESOLVED that the GFP Commission does hereby authorize and direct Katie Ceroll, Director of the Division of Parks and Recreation of GFP, to execute both the New Concession Agreement and Termination Agreement hereinabove described in this Resolution on behalf of GFP.

**LEWIS AND CLARK RECREATION AREA LODGING LEASE TERMINATION
AGREEMENT
LEWIS AND CLARK RESORT**

THIS AGREEMENT, made this _____ day of December, 2018, by and between the South Dakota Department of Game, Fish & Parks, of 523 East Capitol Avenue, Pierre, South Dakota 57501, hereinafter referred to as "Department", and Dakota Hospitality Management, Inc. of PO Box 754, Yankton, South Dakota, 57078, hereinafter referred to as "Concessionaire";

WITNESSETH, that whereas Concessionaire has provided lodging services within the boundaries of Lewis and Clark Recreation Area pursuant to the terms and conditions set forth in that certain Lodging Lease Agreement dated October 18, 2004, as amended; and

WHEREAS, the Concessionaire has notified Department of its intent to sell its assets and relinquish its interest granted under the Lodging Lease Agreement dated October 18, 2004, as amended; and

WHEREAS, as required by the regulations promulgated by the Game, Fish and Parks Commission, the Department issued a prospectus on November 2, 2018, to solicit a successor concessionaire for a new ten year concession lease agreement; and

WHEREAS, Department and Concessionaire desire to mutually agree in writing to terminate said Lodging Lease Agreement, as amended, upon the selection and approval of a new concessionaire at Lewis and Clark Recreation Area and the Department's execution of a new concession lease with a new concessionaire.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained and for good and valuable consideration given by each of the parties hereto to the other party, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto do hereby agree as follows:

1. That the Lodging Lease Agreement dated October 18, 2004, as amended, made and entered into by and between Department and Concessionaire shall be and is in all things cancelled, terminated and annulled effective upon the GFP Commission's approval of a new concession lease and the Department's execution of a new concession lease agreement with a new concessionaire.
2. That such termination shall be contingent upon the Concessionaire's complete fulfillment of its obligations as set forth in the Lodging Lease Agreement dated October 18, 2004, as amended, including but not limited to its obligation to pay in full all franchise fees and promotion fees which may remain due and owing to the Department at the time of termination.

IN TESTIMONY WHEREOF, the parties have set their hands on the day and year first above written.

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH & PARKS

By: _____
Katherine Ceroll, Director
Division of Parks and Recreation

DEPARTMENT

LEWIS AND CLARK RESORT

By: _____
Jeff Wahl
Dakota Hospitality Management, Inc.

CONCESSIONAIRE

**LEWIS AND CLARK RECREATION AREA
LODGING CONCESSION AGREEMENT**

This Concession Agreement is made and entered into on _____, 2018 ("Effective Date") by and between the South Dakota Department of Game, Fish and Parks ("Department") 523 East Capitol, Pierre South Dakota 57501, and Lewis and Clark Lodging, LLC. ("Concessionaire") of P.O. Box 739, Yankton, SD 57078, doing business as Lewis and Clark Resort. This Agreement is subject to and governed by the requirements of ARSD Article 41:13 subtitled Park Concession Leases effective October 17, 2005, (the "Rules").

WITNESSETH

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

Whereas, the Department desires to have a limited and prescribed portion and area of Lewis and Clark Recreation Area operated by a concessionaire as a lodging 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 lodging concession in portions of Lewis and Clark Recreation Area and be a concessionaire, as defined in the Rules.

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

Section 1. Term of Agreement

- (a) This Agreement shall be for a term of ten (10) years, commencing on the effective date, and ending on December 31, 2028.

Section 2. Definitions

- (a) "Agreement" means this Concession Agreement, and all its amendments, addendums, exhibits, attachments, and all documents executed for the purpose of ensuring Concessionaire's performance of this Concession Agreement.
- (b) "Commission" means the South Dakota Game, Fish and Parks Commission.
- (c) "Concessionaire" means as defined under ARSD 41:13:01.
- (d) "Concessionaire Facilities" means as defined under ARSD 41:13:01.
- (e) "Department" means the South Dakota Department of Game, Fish and Parks.
- (f) "Division" means the Division of Parks and Recreation, a division of the Department of Game, Fish and Parks responsible for the administration of the state park system, including Lewis and Clark Recreation Area.
- (g) "Director" means the Director of the Division of Parks and Recreation, acting on behalf of the Secretary of the Department of Game, Fish and Parks, and his or her duly authorized representatives.
- (h) "Fair Market Value" means as defined under ARSD 41:13:01.
- (i) "Government Facilities" means as defined under ARSD 41:13:01
- (j) "Gross Receipts" means all revenue received, to be received, or realized by Concessionaire from all sales for cash or credit, of services, accommodations, materials and other merchandise made pursuant to the rights granted under this Agreement, Gross Receipts of SubConcessionaires, commissions earned on leases or agreements with other persons or companies operating in the 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, revenue received from park entrance license sales, and hunting and fishing license sales (excluding agent fees), will be excluded from Gross Receipts.
- (k) "Gross Receipts of SubConcessionaires" means all revenue received, to be received, or realized by SubConcessionaires from all sales for cash or credit, of services, accommodations, materials

and other merchandise made as a result of the exercise of the rights conferred by a lease, license or agreement between the Concessionaire and a SubConcessionaire at the Resort, revenues of 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 Lewis and Clark Recreation Area.
- (m) "Personal Property" means as defined in ARSD 41:13:01.
- (n) "Possessory Interest" means as defined in ARSD 41:13:01.
- (o) "Qualified Appraiser" means as defined in ARSD 41:13:01.
- (p) "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 manager of Lewis and Clark Recreation Area or his or her duly authorized representatives.

Section 3. Accommodations, Facilities and Services

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

Minimum Required Accommodations, Facilities and Services

1. Lodging service to include the following:
 - a) 14 three bedroom housekeeping cabins

- b) 3 two bedroom housekeeping cabins
- c) 24 motel type housekeeping units
- d) 1 group lodge
- 2. Coin operated guest laundry
- 3. Swimming pool
- 4. 2 picnic shelters
- 5. Playground
- 6. Volleyball and basketball courts
- 7. Park entrance license 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 in writing these or any other additional services contemplated by the Concessionaire prior to the services being offered.

Additional Authorized Accommodations, Facilities and Services:

- 1. Resort store including curios, souvenirs and accessories
- 2. Meeting room service
- 3. Bike rentals

- (c) The Department retains the right to authorize additional accommodations, facilities, services and merchandise within the Resort. The Department shall give the Concessionaire first opportunity to provide such additional accommodations, facilities, services and merchandise. If Concessionaire does not desire to provide such additional accommodations, facilities, services and merchandise, or if the Department and Concessionaire are unable to agree upon the terms under which Concessionaire would provide such additional accommodations, facilities, services and merchandise, the Department shall be entitled to contract with a third party to provide said additional accommodations, facilities, services and merchandise within the Park under terms acceptable to the Department.
- (d) The Department reserves the right to establish reasonable standards as to the nature, type and quality of Concessionaire's services and merchandise. The Department retains the right to disapprove types of services and merchandise that do not meet these standards.

Section 4. Rates and Quality Control

- (a) All rates, fees and prices charged the public by Concessionaire must be reasonable and comparable to the fees, rates and charges charged for similar accommodations, facilities, services and

merchandise in the region or outside the region if similar accommodations, facilities, services and merchandise are not provided in the region. Concessionaire shall clearly post or mark all rates and prices for accommodations, facilities, services and merchandise.

- (b) The Department reserves the right to establish reasonable standards as to the nature, type and quality of the Concessionaire's accommodations, facilities, services and merchandise. All accommodations, facilities, services and merchandise sold are subject to the rules and laws of the State of South Dakota and the United States.

Section 5. Capital Development and Improvements

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

- ii. Upon completion of approved projects, Exhibit A shall be amended to include the additions and value of Possessory Interest associated with the fixtures, structures and improvements.
- (b) In addition to any rights and remedies afforded to the Department for breach of this Agreement, if Concessionaire Facilities and/or Government Facilities are modified, including the construction of any unauthorized fixtures, structures and or improvements to or of Concessionaire Facilities and/or Government Facilities, and the modifications occur without the Department's written consent, at the discretion of the Department, the Department may:
- (i) Require that the Concessionaire at the Concessionaire's expense, restore the Concessionaire Facilities and/or Government Facilities to their original condition; or
 - (ii) Direct that the modifications becomes Government Facilities and that no Possessory Interest compensation be paid to Concessionaire
- (c) Activities involving any ground disturbance, placement of fill material, prescribed burning of vegetation or tree removal shall require prior written approval from the Department. Any requests for these activities shall be made to the Department in writing in sufficient detail to determine the scope and schedule of the proposed project. Drawings, maps or illustrations accurately describing the location of these activities shall accompany the written request. All activities involving any ground disturbance, placement of fill material, prescribed burning of vegetation or tree removal shall be completed in compliance with all local, state and federal laws and regulations.
- (d) In the event that Concessionaire constructs fixtures, structures or improvements to Concessionaire Facilities or Government Facilities, Concessionaire shall be responsible for securing all necessary licenses and permits required under local, state and federal laws and regulations.

- (e) All construction activities must meet or exceed existing levels of craftsmanship. No Department owned resources or materials from the Park shall be used in any project, except by written consent of the Department.
- (f) Concessionaire shall not cause, permit or suffer any lien or encumbrance to attach to the 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 Resort as identified in Exhibit A-1.
- (b) The Department hereby assigns to Concessionaire the Concessionaire Facilities set forth in Exhibit A-2, the Government Facilities identified in Exhibit A-3 all of which are located within the Resort.
- (c) Concessionaire has inspected the Concessionaire Facilities and Government Facilities identified in Exhibit A-2 and A-3, is thoroughly aware of their condition, and accepts them and other items in an "as is" condition.
- (d) 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.

- (e) 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.
- (f) If Government Facilities are damaged by the acts, omissions, or conduct of Concessionaire, its agents, employees or customers, which damage in the sole discretion of the Department is practical to repair or replace, it shall be the responsibility of Concessionaire to make the necessary repairs/replacements at its own expense to a condition satisfactory to the Department. If Government Facilities are damaged by the acts, omissions, or conduct of Concessionaire, its agents, employees or customers, which damage in the sole discretion of the Department amounts to a total loss or is impractical to repair or replace, Concessionaire shall compensate Department for the loss.
- (f) The Department shall have the right to enter the 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. 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., (v) hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and (vi) any hazardous or toxic substances or pollutant regulated under any federal, state or local law.

- (h) Any names, logos, trademarks, or copyrights (the "Intellectual Property") developed during or pursuant to this Agreement that in any way associates with, identifies, implicates, or infers an affiliation with the State of South Dakota, the Department, the State Park System, Lewis and Clark Recreation Area, and/or the 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 Department, Concessionaire shall receive a non-exclusive, non-transferable license to use the Intellectual Property with respect to the accommodations, facilities, services and merchandise offered for sale by Concessionaire. The license shall be limited to the sale of accommodations, facilities, services and merchandise from the 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 all utilities in the Resort, including but not limited to water, electricity, garbage disposal, telephone, television and telecommunication and wi-fi service. 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 lodging businesses. The records shall be made available for inspection by the Department on reasonable notice during normal working hours.
- (b) All capital costs of any fixtures, structures or improvements for which Concessionaire claims a Possessory Interest shall be recorded at actual cost and the depreciation schedule shall be based on generally accepted accounting principles, all of which shall be submitted to the Department at the time such capital assets are entered on Concessionaire's books.
- (c) Concessionaire shall submit to the Department annual accounting records and reports for the operation of the 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 as well as promotion fee payments as provided for in Section 11.

- (d) Concessionaire shall within one hundred twenty (120) days of the close of Concessionaire's fiscal year submit to the Department annual 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) 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.
- (g) Concessionaire agrees to waive any right to confidentiality of all records and reports identified in this section for Commission purposes. This waiver is not intended to apply to third parties or the public at large, except as provided by State law and Subsection (h) below.
- (h) Concessionaire agrees to waive any right to confidentiality of records, reports and information contained therein for the purposes of preparing a prospectus and other documents for leasing the Resort, as necessary for any subsequent concessionaire to operate the Resort, or for other legislative or administrative purposes.

Section 10. Franchise Fees

Concessionaire shall pay to the Department a franchise fee during each year of the Agreement term which shall be a sum of money equal to five percent (5%) of Gross Receipts

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. Promotion Fees

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

Section 12. Remedies, Termination or Expiration of the Agreement

- (a) Procedures upon termination or expiration of this Agreement shall be in accordance with ARSD Article 41:13 in effect at the Effective Date of this Agreement or as the same may hereafter be amended during the term of this Agreement.
- (b) Upon termination or expiration of this Agreement for any reason, and, in the event that Concessionaire is not to continue the operations authorized under this Agreement after its expiration, Concessionaire shall comply with all applicable requirements of Exhibit C to this Agreement, "Transition to New Concessionaire." This section and Exhibit C shall survive the expiration of this Agreement.
- (c) The Department may elect any and all remedies available to the Department under applicable law, including but not limited to the termination of this Agreement upon written notice in whole or in part at any time for default, and may terminate this Agreement upon written notice in whole or in part when necessary for the protection of visitors or area resources. Termination for default may be utilized in circumstances where the Concessionaire has materially breached any requirements of this Agreement, including but not limited to failure to provide obligated fee payments, maintain and operate the minimum required accommodations, facilities, services and merchandise as provided in Section 3 herein, sale of

merchandise disapproved for sale, failure to meet the requirements of the operations and maintenance performance standards as set forth in Exhibit B, and has failed to cure the breach as set forth in this Subsection. If Concessionaire materially defaults on any of the terms or conditions of this Agreement, and does not cure or remedy such default within ten (10) days of receipt of written notice from the Department, or Concessionaire is not diligently proceeding to cure such default if the curing of such default cannot be reasonably effected within such ten (10) day period, the Department may terminate this Agreement without further notice. In the event of termination of this Agreement for default, the provisions of this Section apply.

- (i) To avoid interruption of service at the Resort upon expiration or termination of this Agreement, Concessionaire shall, at the option and in the sole discretion of the Department:
 - a. continue to provide visitor services for a reasonable time, as agreed upon in writing by the parties, to enable the Department to select a successor, and to allow the successor to otherwise comply with the terms of this Agreement in the ordinary course of business and endeavor to meet the standards of service and quality that are required by the Department in order to maintain customer service in conjunction with Exhibit B; or
 - b. consent to the assignment of a temporary operator, or operation by the Department, for the operation of the Concessionaire Facilities and Personal Property for a period not to exceed 365 days; provided that the temporary operator or the Department pays Concessionaire a reasonable fee for the use of the Concessionaire Facilities and Personal Property, not to exceed ten percent (10%) annually of the depreciated book value of such Concessionaire Facilities and Personal Property used by the temporary operator or the Department, and prorated for the amount of time they are in use by the temporary operator or the Department.
 - c. consent to the purchase of Concessionaire's inventory and supplies by the temporary operator or the Department for use or resale purposes. The temporary operator or the Department must reimburse Concessionaire for any inventory and supplies purchased by Concessionaire and retained by the temporary operator or the Department for use or resale purposes. The value of the inventory and supplies retained by the

temporary operator or the Department shall be determined by actual invoice amounts submitted to or paid by Concessionaire. .

- d. consent to the transfer of the "Intangible Items" as listed in the Settlement Agreement used at the Resort to a temporary operator, successor concessionaire or the Department for use or resale purposes..
- (d) The Department shall have a right to offset amounts owed to the Department against all amounts owed by the Department under this Agreement.
- (e) 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.
- (f) In addition to the rights and remedies provided for herein, the Department and Concessionaire shall each have all remedies at law or in equity, all remedies being cumulative.

Section 13. Possessory Interest Provisions

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

Section 14. Indemnification, Waiver of Claims and Insurance

- (a) Concessionaire agrees to defend, hold harmless and indemnify the State of South Dakota, its officers, agents and employees from and against any and all actions, suits, damages, liabilities and expenses, including but not limited to attorneys' fees, in connection with the loss of life, personal injury and/or damages to property of third persons that may arise from or out of the occupancy, use or maintenance of the 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) Worker's Compensation Insurance and Unemployment Insurance: This coverage shall be as required by South Dakota law covering Concessionaire employees as will protect itself and the State of South Dakota and agencies thereof from claims under the Worker's Compensation laws and unemployment insurance laws of the State of South Dakota.

- (v) Personal Property Insurance:
1. Amount of Insurance: 100% of replacement value, without deduction for physical depreciation
 2. Insurance shall cover the Personal Property contained in all buildings, structures, improvements & betterments for all Government Facilities and Concessionaire Facilities and/or used in Concessionaire's operations.
 3. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
 4. The policy shall provide for loss recovery on a replacement value basis, without deduction for physical depreciation.
 5. "Blanket Amount" insurance is to be provided. The amount of insurance (limit of liability) should represent no less than 100% of the replacement value of the sum total of all insured property, without deduction for physical depreciation.
 6. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
 7. The vacancy and unoccupancy restriction, if any, must be eliminated for Personal Property that shall be vacant or unoccupied beyond any time period specified in the policy.

(vi) Real Property Insurance: Concessionaire shall provide real property insurance to cover against loss to Concessionaire Facilities at 100% of replacement value (without deduction for physical depreciation).

- (c) These minimum requirements are subject to evaluation and revision every two years during the term of this Agreement or upon renewal or modification of this Agreement.
- (d) Concessionaire, prior to engaging in and/or providing the services described herein, shall furnish satisfactory proof of such insurance by filing with the Department, a Certificate of Insurance from the Insurance Company verifying and certifying to the existence and limits of the required insurance. Such Certificate shall provide therein that no cancellation of said insurance shall be made or become effective without at least thirty (30) days' written notice being provided to the Department. Concessionaire is required to provide to the Department a current certificate of insurance at all times.

- (e) Concessionaire agrees to report to the Park Supervisor any event encountered in the course of performance of this Agreement which results in injury or loss to any person or property, or which may otherwise subject Concessionaire, the State of South Dakota and/or their respective officers, agents or employees to liability. Concessionaire shall report any such event to the Park Supervisor immediately upon discovery. Concessionaire's obligation under this section shall only be to report the occurrence of any event to the Park Supervisor and to make any other report provided for by Concessionaire's duties or applicable law. Concessionaire's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the Park Supervisor under this section shall not excuse or satisfy any obligation of Concessionaire to report any event to law enforcement or other authorities under the requirements of any applicable law.
- (f) The Department has no obligation to and is not responsible for payment of any money to Concessionaire that results from disruption of services.
- (g) Except as set forth in Section 6(e), neither the Department nor Concessionaire shall be liable to the other, nor to any SubConcessionaires, for any loss or damage to any building, structure or other tangible property owned by the other, including but not limited to lost rents, income and profits, even though such loss or damage might have been occasioned by the negligence of such party, its employees, agents, contractors or invitees. Concessionaire shall include in any lease, contract or agreement with a SubConcessionaire a provision in accordance with this Subsection.

Section 15. Repair and Maintenance Reserve Provisions

- a) Concessionaire shall establish a repair and maintenance reserve (the "Repair and Maintenance Reserve"). Concessionaire shall contribute to the Repair and Maintenance Reserve a sum no less than 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 Concessionaire Facilities included in this Agreement.
 - (i) 20% of the total annual contribution may be expended by Concessionaire for repair and maintenance of

- Concessionaire Facilities on an emergency basis without prior approval. If not expended during any calendar year, the remainder shall be expended by Concessionaire under the provisions of Section 14 (b) (ii) hereof.
- (ii) The remaining 80%, plus any amounts not expended under subsection (b)(i) of this Section 15 shall be administered and utilized for maintenance, repair and renovation of Concessionaire Facilities which projects have been previously approved by the Department.
- c) Unallowable Uses. Funds in the Repair and Maintenance Reserve shall not be used for the following:
- (i) Seasonal salaries of Concessionaire's employees, SubConcessionaire's employees, and/or independent contractors performing housekeeping and grounds keeping activities associated with Concessionaire's and SubConcessionaire's respective operations.
 - (ii) Routine maintenance including, but not limited to, periodic and/or occasional inspection, adjustment, lubrication, cleaning, painting, replacement of parts, repairs, and other activities intended to prolong service and prevent unscheduled breakdown.
 - (iii) Preventative maintenance, including planned or scheduled servicing, inspection and adjustment activities that result in continued service, fewer breakdowns, and intended to prevent premature failure of equipment and materials.
 - (iv) New construction or additions to existing facilities.
- d) Possessory Interest. Concessionaire does not obtain any right to a Possessory Interest for repair and maintenance of Concessionaire Facilities funded from the Repair and Maintenance Reserve.
- e) Approval process. An annual repair and maintenance plan of action shall be developed by Concessionaire and submitted to the Department for approval prior to the commencement date of this Agreement, and by November 1 of each year thereafter. The plan shall outline proposed repair and maintenance projects consistent with the above requirements for the succeeding calendar year. If Concessionaire and the Department cannot agree on the plan of action, then the Commission shall make the final determination on the plan. The repair and maintenance plan shall be performed as approved prior to December 15 of the following year unless the approval contemplated the extension thereof, or unless an extension is granted by the Department. Concessionaire shall

provide the Department with a detailed report of activities and the costs expended and incurred, for all annual repair and maintenance work completed. This report is due by January 1 of each year, unless an extension of time was granted.

- f) Carryover of funds on an annual basis. If a repair and maintenance project costs more than the balance included in the Repair and Maintenance Reserve, then Concessionaire, at Concessionaire's discretion may fund the repair and maintenance costs in excess of funds in the Repair and Maintenance Reserve. The excess costs shall be refunded, without interest, to Concessionaire from funding to occur in subsequent years.
- g) Treatment of reserve funds at end of term. The parties agree to make every effort to exhaust all funds in the Repair and Maintenance Reserve by the end of the Agreement term. If there is a surplus at the end of the term, any remaining Repair and Maintenance Reserve funds shall be transferred to the Department for the purpose of ongoing maintenance of Concessionaire Facilities associated with this Agreement. If there is a deficit at the end of the Agreement term, Department shall compensate Concessionaire for the amount of the deficit.
- h) If this Agreement is terminated by the Department before the established expiration date, the Department shall reimburse Concessionaire for the cost of approved repairs and maintenance activities expended by Concessionaire which have been prepaid but not recovered by application of the annual Repair and Maintenance Reserve.

Section 16. General Provisions

- (a) Reference to the Department in this Agreement shall include the Department Secretary, Director of the Division of Parks and Recreation, Park Supervisor and their authorized representative(s).
- (b) Concessionaire shall comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to operating the 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 Michael Grave on behalf of Concessionaire.

(g) In addition to the remedies afforded to the Department for breach of the terms of this Agreement, the Department reserves the right to bill Concessionaire for, and the Concessionaire agrees to pay to the Department, the actual costs incurred by the Department to provide any minimum required accommodations, facilities, services and merchandise for sale specified in Section 3 of this Agreement in the event Concessionaire fails to provide those minimum required accommodations, facilities, services and merchandise for sale.

(h) In the event that a court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

- (i) Concessionaire acknowledges and supports the Department's effort to collect park entrance fees to provide for the continued maintenance of the South Dakota state park system.
- (j) In each instance where the consent, approval or acceptance of the Department is required under the terms of this Agreement, such consent, approval or acceptance shall be in writing and shall not be unreasonably withheld by the Department.
- (k) Concessionaire agrees that in performance of this Agreement it is acting as an "independent contractor" and not as an employee, representative or agent of the Department.
- (l) Any notice or other communication required under this Agreement shall be in writing and sent or delivered to the address set forth below. Notices shall be given by and to the Director on behalf of the Department, and by and to Michael and Valeri Grave on behalf of Concessionaire, or such authorized designees as either party may from time to time designate in writing.

<u>Department</u> Director Division of Parks & Recreation 523 East Capitol Pierre, South Dakota 57501	<u>Concessionaire</u> Michael and Valeri Grave Lewis and Clark Resort PO Box 739 Yankton, SD 57078
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Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail or, if personally delivered, when received by such party. Copies of all correspondence from Concessionaire to the Department or Director shall be sent simultaneously to the Park Supervisor.

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

Section 17. Discrimination.

Concessionaire shall not discriminate against any person based upon race, color, national origin, religion, sex and disability in the operation and maintenance of the 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 18. 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. The Park Supervisor shall provide Concessionaire with Resort employee entrance license exemption decals 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 19. Resident Use

Except for the on-site manager's residence located in the Resort office building, 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 21. Surety Bond Requirement

The Concessionaire will furnish the Department with a surety bond, certificate of deposit or other instrument as approved by the Department in the name of the Department of Game, Fish and Parks effective for each year of the lease in the amount of \$32,000.00 conditioning the Concessionaire's faithful fulfillment and performance of the terms and conditions of this Agreement. The surety bond, certificate of deposit or other approved instrument shall be released to the Concessionaire upon termination or expiration of the lease after all Franchise Fees, Promotion Fees and other charges owed to the Department have been paid in full and facilities have been returned to the Department in a condition consistent with the terms of this Agreement. Commencing on the effective date of this Agreement, and continuing each January thereafter during the term of this Agreement, the Department shall review the Concessionaire's performance of its duties and obligations under this Agreement, and shall, in its sole discretion, determine whether to release, reduce, or maintain the bonding requirements set forth in this Section 21.

Section 21. Procedure for Assignment, Sale or Transfer of Agreement

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

END OF AGREEMENT TEXT

The above and foregoing CONCESSION AGREEMENT was approved by the Game, Fish and Parks Commission on _____, 2018 authorizing the Director of the Division of Parks and Recreation to execute the same on behalf of the Commission.

Dated this ____ day of _____, 2018.

SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

BY: _____
Katherine Ceroll, Director
Division of Parks and Recreation

CONCESSIONAIRE

BY: _____
Michael Grave, President
Lewis and Clark Lodging, LLC. DBA Lewis and Clark Resort

List of Exhibits

Exhibit A

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

Exhibit B

PERFORMANCE STANDARDS FOR THE OPERATIONS AND
MAINTENANCE OF THE LEWIS AND CLARK RESORT

Exhibit C

TRANSITION TO A NEW CONCESSIONAIRE

Exhibit D

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

**EXHIBIT A-1
RESORT AREA**



EXHIBIT A-2

List of Concessionaire Facilities and associated possessory interest

<p align="center">CONCESSIONAIRE IMPROVEMENT AUTHORIZATION AND DETERMINATION OF POSSESSORY INTEREST</p> <p align="center">South Dakota Division of Parks and Recreation</p>			
<p align="center">Exhibit A-2 attached to and made part of Agreement:</p>			
<p align="center">Concessionaire:</p>		<p align="center">Agreement (Effective Date):</p>	
<p align="center">Concessionaire Facilities and Associated Possessory Interest</p>			
Fac No	Qty	Description	Possessory Interest at Agreement Effective Date
	14	3 bedroom rental cabins	100%
	3	2 bedroom rental cabins	100%
	3	Motel unit buildings w/ 8 individual rental units each	100%
	1	Group Lodge	100%
	1	Office and Manager residence building	100%
	1	Garage	100%
	1	Storage shed	100%
	1	swimming pool	100%
	1	set playground equipment	100%
	2	picnic shelters	100%
	2	Volleyball courts	100%
	1	Basketball court	100%
		Above ground utilities	100%

EXHIBIT B

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

Resort facilities and services must be open and available to the public. The minimum season for all services is daily operation during May 1 until September 30th of each year. Concessionaire shall have access to the Resort at all times during the term of the agreement. During those periods when the facilities and services are not open to the public, the Concessionaire's activities shall be limited to those necessary to accomplish its administrative, maintenance, capital improvement and security obligations and responsibilities under the Agreement. Any exceptions to this must

be approved by the Department. If the 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.

(b) Hours of Operation

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

Operating Hours				
		Minimum	Maximum	Minumum days
	All Resort service	7:00 am to 10:00pm	6:00am to 11:00pm	Monday Through Sunday

- (ii) Deviations from this standard must be submitted in writing and in advance of any modifications and shall be subject to approval by the Department.
- (iii) An authorized representative of the Concessionaire shall be available to the Department's on-site representative at all times to respond to and handle emergencies. A listing of authorized Concessionaire representatives and their permanent residence telephone numbers shall be provided to the Department at the commencement of the Agreement and annually thereafter to be included in the annual operating plan. Modifications to the listing shall be communicated to the Department within twenty-four hours of the same.

(c) Utilities

Electricity – The Concessionaire shall be responsible for activating electrical service with the electric provider and paying directly to the provider all electrical costs attributable to usage of the Resort. The Concessionaire shall be responsible for maintenance of the electrical services that

serve 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 Department shall provide the waste water disposal service within the Resort. The Department shall be responsible for all major repairs and replacements required to maintain the sewer infrastructure. The Concessionaire shall be responsible for removal of all blockages of the sewer system within the Resort to ensure continuous availability of the sewer system for public use. All sanitary sewer collection system repairs shall be performed by a qualified individual licensed by the South Dakota Plumbing Commission, except for emergency temporary repairs required to prevent or minimize property damage or for public safety.
The Concessionaire shall not discharge or permit to be discharged any chemicals, substances or materials into any sanitary or storm sewer system that are not lawful and labeled or designated as acceptable for such discharge into the sewer systems.
- (iii) Garbage Disposal – The Concessionaire shall be responsible for contracting with a local garbage hauler and paying all costs directly to the hauler. The Concessionaire is responsible for providing dumpsters and receptacles of which the size, locations, colors and construction are acceptable to the Park Supervisor. Dumpsters shall be emptied and maintained as to not allow or encourage overflowing garbage, offensive odors or other unsightly problems. No disposal of refuse of any type shall be permitted within the Park without approval of the Park Supervisor.
- (iv) Communications - The Concessionaire shall provide wireless internet services the Resort. 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 Department shall provide at no expense to the Concessionaire, and 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 Lewis and Clark Recreation Area.
- (ii) The Department shall cooperate with the Concessionaire in the distribution and communication of available concession services and customer satisfaction surveys, so long as all materials are provided to the Department free of charge, and Department resources are available to perform the requested distribution and/or communication.
- (iii) In an effort to evaluate and improve public services provided by Concessionaires throughout the state park system, the Department may wish to implement customer satisfaction surveys for Concessionaire patrons. The Concessionaire shall cooperate with the Department for the distribution, collection, and administration of any customer satisfaction surveys or comment cards.

(f) Orientation Training for Resort and Park Employees

- (i) All Resort employees and volunteers shall be expected 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 on an annual basis to arrange for and allow Park employees to attend, or as otherwise agreed to be necessary by the Concessionaire and Park Supervisor, an orientation session scheduled and conducted by the Concessionaire to acquaint Park employees with the resources, features and services of Lewis and Clark

Recreation Area. Concessionaire employees, and designated representatives that are employed by the Concessionaire at the time that the training is offered, shall participate in training provided by the Department on Park regulations and informational topics

- (iii) The Concessionaire shall ensure that all of its employees are trained in risk management, customer relations, food safety (where applicable for staff involved in food handling) and alcohol server certification where applicable.

(g) Advertising

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

(h) Special Events

- (i) Special events planned or promoted by the Concessionaire must be proposed in writing and receive prior written approval of the Department. Written proposals shall be made at least 15 days in advance of the planned special event.
- (ii) Special events are those activities which materially deviate from the minimum required and authorized services. In addition to the written approval of the Department, special events permits may be necessary. Conformance to all Department regulations related to special events shall be required.

(i) Employees

- (i) Any changes or appointments proposed by the Concessionaire to the management personnel who oversee all areas of the Resort are subject to Department approval.
- (ii) Each on-site 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 rude or discourteous to customers, disorderly, incompetent or unsatisfactory, the Concessionaire shall investigate the matter thoroughly, and take appropriate corrective action.

- (iii) The Department shall issue to all employees and volunteers of the Concessionaire a park entrance license exemption decal to be placed and properly displayed in employee and volunteer vehicles at all times when the vehicles are parked within the 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 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, ingestion 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, 20-12-23.4, and applicable federal laws.

(n) Safety

- (i) The Concessionaire must maintain and test all life and property safety equipment, devices and systems according to established and applicable laws, rules, regulations, and codes. Such equipment, devices, and systems may include but are not limited to smoke detectors, fire extinguishers, fire suppression systems, alarms, escape routes and egress openings. Any malfunctions of safety equipment, devices and systems must be reported to the Park Supervisor immediately.
- (ii) The Concessionaire shall immediately notify the Department of any accident of which it has knowledge involving visitors, patrons or employees. The Department shall immediately notify the Concessionaire of any accident that involves personal injury or property damage in the 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) The Concessionaire shall reasonably attempt to ascertain the prospective renter's ability and competency to safely operate the item(s) being rented. Where reasonable doubt as to the required ability and competency exist, the Concessionaire may refuse to rent the item(s).
- (iii) 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) Merchandise, Convenience Items and Accessories Sales

- (i) All merchandise, convenience items and accessories and the like sold or kept on the premises for sale shall be of high quality, wholesome and pure and shall conform in all respects to the applicable federal, state and municipal laws and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale. Concessionaire shall be responsible for collecting and remitting all sales taxes as required by law.
- (ii) Display areas and shelving are to be clean and attractive and the merchandise well-presented and uncluttered.
- (iii) No merchandise shall be sold which are obscene, sexually oriented, profane, vulgar or demeaning.
- (iv) Fireworks shall not be sold, stored or used at the Resort.

(q) Resort Security

Competent and appropriately trained personnel will be on security duty 24 hours per day during the required operating season. An on-site supervisor will reside in the Resort residence throughout the remainder of the year to provide security control. Primary consideration will be given to the safety of people, personal property and Resort facilities. The Concessionaire shall make arrangements with a local law enforcement agency for response service when enforcement situations arise in the Resort. Concessionaire will establish and share with the Department its

procedure(s) for contacting law enforcement personnel for assistance when needed.

(r) Communications

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

1. The Concessionaire will provide an after-hours phone number to contact Resort staff in the event of an emergency.
2. The Concessionaire shall provide a comment card system to be located at all key facilities at the Resort.

SECTION 3. MAINTENANCE AND FACILITY IMPROVEMENTS

(a) General

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

(b) Plans and Materials

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

(c) Maintenance Responsibilities-Concessionaire

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

- (i) Buildings and Structures – The Concessionaire shall maintain all buildings and structures, including Government Facilities, assigned to or owned by the Concessionaire, including but not limited to painting, electrical and plumbing maintenance and cleaning. Maintenance and cleaning should be equivalent to that generally provided by skilled workers using commercial quality building maintenance

equipment and materials. Exterior and interior paint and roof colors must be approved in advance by the Department.

- (ii) Personal Property – The Concessionaire shall maintain all Personal Property assigned to or owned by the Concessionaire including, but not limited to painting, re-finishing, cleaning, and repairing. Maintenance and cleaning should be equivalent to that generally provided by skilled workers using commercial quality maintenance equipment and materials.
- (iii) Sidewalks, Steps, Decks and Landings – The Concessionaire shall maintain all concrete, 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.
- (iv) Grounds – Mowing, weed and pest control and 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.
- (v) 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.
- (vi) 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.
- (vii) 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.

- (viii) 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.
- (ix) Locks – The Concessionaire shall provide the Park Supervisor with Resort facility keys or access codes necessary for security, emergency or other lawful purposes.
- (x) Winterizing Facilities – The Concessionaire is responsible for taking appropriate measures to protect all facilities for which the Concessionaire has maintenance responsibility. Protective measures may include (but not limited to), draining, blowing out and/or flushing of water lines, window bracing, and utility shut-offs. The Concessionaire is responsible for spring re-opening while it is the concessionaire.
- (xi) 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 facilities with snow stakes/flags and for keeping snow clear around hydrants.
- (xii) Retail Operations. All shelving and merchandise display areas shall be sound, secure, clean and presentable.
- (xiii) 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.

(d) Maintenance Responsibilities-Department

- (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. Snow Removal will be in accordance with Section 3 (d) (ii) of this Exhibit below.

- (ii) Snow Removal – The Department will be responsible for snow removal necessary to maintain access to the Office building. Snow removal will be performed on weekdays (Monday – Friday) during regular park employee work hours (8:00 a.m. – 5:00 p.m.). During these periods, the Department is not obligated to perform snow removal until snowfall, blowing and drifting have ceased. The Department cannot guarantee snow removal for the access road outside of regular park employee work hours, but agrees to cooperate if staff is reasonably available to perform such duties. .
- (iii) Government facilities – the Department shall be responsible for major repairs or replacement of facilities due to end of useful life.

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 a minimum, at least one inspection will be held in the spring prior to Memorial Day and in the fall no later than October 31. The purpose of the inspection will be to identify the current conditions and maintenance levels of the facilities and Personal Property therein.
- (ii) Upon analysis of the results of the inspection, the Department will present the Concessionaire with a written list of maintenance objectives for which the Concessionaire is responsible 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 15 of the Concession Agreement. The Concessionaire shall submit a repair and maintenance program and plan to the Department for approval no later than November 1 of each year.
- (iii) In the event that the Concessionaire refuses or fails to perform any of the projects identified by a date and time specified in the written inspection report, the Department

specifically reserves the right to complete the project(s) and charge the resulting expenses to the Concessionaire.

(b) Health, Safety, and Fire Inspections

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

(c) Agreement Compliance Audits

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

EXHIBIT C

TRANSITION TO A NEW CONCESSIONAIRE

Section 1. In General

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

Section 2. Cooperation Prior to the Termination Date

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

(a) Continue Operations.

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

(b) Continue Bookings.

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

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

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

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

(d) Financial Reports.

Within 30 days after receipt of the notification of the selection of the New Concessionaire, provide the New Concessionaire with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessionaire's operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessionaire shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum:

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

(e) Inventory and Personal Property.

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

(f) Other Information and Reports.

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

(g) Access to Facilities

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

(h) Other Cooperation.

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

Section 3. Cooperation Upon the Termination Date.

Upon the Termination Date, the Concessionaire shall:

(a) Transfer of Contracts and Licenses.

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

(b) Reservation Systems.

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

(c) Fees and Payments.

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

(d) Access to Records.

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

(e) Removal of Marks.

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

(f) Other Cooperation.

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

RESOLUTION 18-11

WHEREAS, the current Concession Lease Agreement at Roy Lake Resort located in Roy Lake State Park dated January 1, 2004 expires on December 31, 2018; and

WHEREAS, as required by the regulations promulgated by the Game, Fish, and Parks Commission, the Department has issued prospectuses on November 9, 2017, March 5, 2018, July 12, 2018 and September 10, 2018 to solicit a successor concessionaire for a new ten year concession lease agreement; and

WHEREAS, the prospectus issuances have expired and have not yielded an acceptable proposal; and

WHEREAS, as further provided in the regulations promulgated by the Game, Fish, and Parks Commission, the Commission may extend the Concession Lease Agreement for one year at a time to allow for a successor Concessionaire to be found; and

WHEREAS, the current Concessionaire, Jan Pitzl (Concessionaire) is agreeable to a one year extension of the Concession Lease Agreement and has requested that the Commission authorize the issuance of a subsequent prospectus to include the same terms and price as the most recent offering; and

NOW, THEREFORE, BE IT RESOLVED, that the GFP Commission does hereby approve an extension of the current Concession Agreement for one year resulting in an expiration date of December 31, 2019;

BE IT FURTHER RESOLVED that the GFP Commission does hereby authorize the Department to issue and advertise a prospectus for Roy Lake Resort at the selling price of \$739,000 to include a draft concession lease containing the same terms and conditions as has been previously advertised to the public.

RESOLUTION 18- 12

WHEREAS, South Dakota Parks and Wildlife Foundation owns real estate (Property) described as:

That part of the Northwest Quarter of the Northwest Quarter of Section 31, Township 103 North, Range 47 West of the 5th Principal Meridian, Minnehaha County, South Dakota lying South of the Railroad Right of Way; Together with that part of the Southwest Quarter of the Northwest Quarter of Section 31, Township 103 North, Range 47 West of the 5th Principal Meridian, Minnehaha County, South Dakota lying South of the Railroad Right of Way; Together with the Northwest Quarter of the Southwest Quarter of Section 31, Township 103 North, Range 47 West of the 5th Principal Meridian, Minnehaha County South Dakota; and

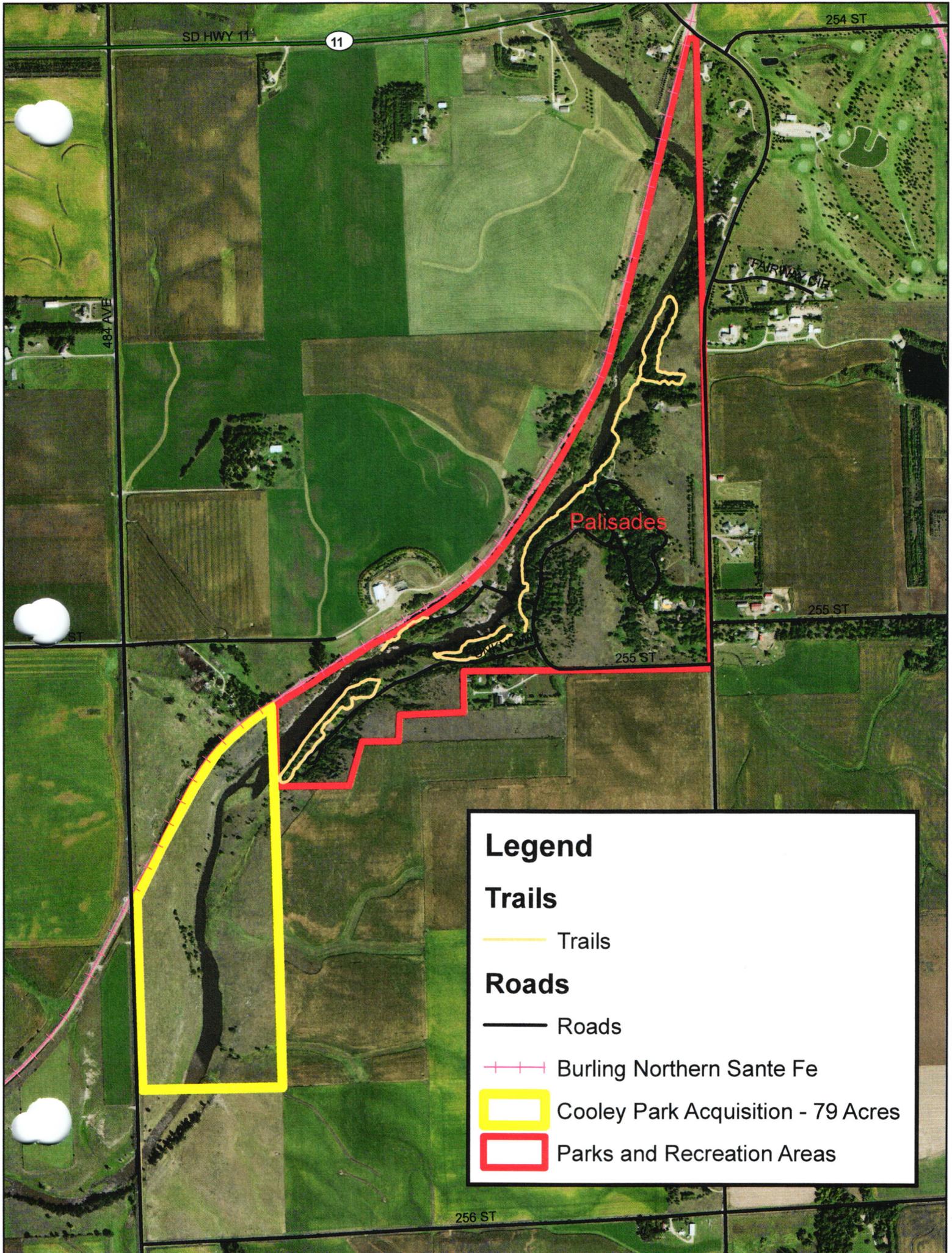
WHEREAS, South Dakota Parks and Wildlife Foundation, Inc. desires to gift the Property to the South Dakota Department of Game, Fish and Parks (Department) as an addition to Palisades State Park; and

WHEREAS, the Department has evaluated and determined that the Property would serve very well as an addition to Palisades State Park; and

WHEREAS, the Department is authorized to accept gifts of property for park and recreational purposes per SDCL §§ 41-2-19 and 41-2-24;

NOW, THEREFORE, BE IT RESOLVED, that the South Dakota Game, Fish and Parks Commission does hereby authorize the Department to accept the gift of the Property from South Dakota Parks and Wildlife Foundation to be used as an addition to Palisades State Park.

BE IT FURTHER RESOLVED that the South Dakota Game, Fish & Parks Commission, on behalf of the citizens of South Dakota, does hereby acknowledge and express its deepest appreciation and gratitude to South Dakota Parks and Wildlife Foundation for its generosity, and further acknowledges the benefits this gift will provide at Palisades State Park.



Legend

Trails

— Trails

Roads

— Roads

—+—+—+ Burling Northern Sante Fe

□ Cooley Park Acquisition - 79 Acres

□ Parks and Recreation Areas

**Completed
Custer State Park Resort
FYE 2018 R & M Projects**

2018
Expenditures

25

All Resorts

<u>Emergency Funds:</u>	\$	-
Total All Resorts	\$	-

STATE GAME LODGE

Landscape Plan Phase 1	\$	102,920.32
Creekside Cabin Siding and Windows	\$	48,764.76
Gamekeepers Cabin Siding and Windows	\$	43,047.04
Jeep Barn Renovation	\$	547,197.68
Game Lodge Historical Rooms Shower Renovation	\$	3,114.69
Dorm Remodel Recreation Room	\$	32,100.54
<u>Emergency Funds:</u>	\$	31,560.94
<i>Building Repairs, Plumbing, HVAC, Electrical, Fire Suppression</i>		
STATE GAME LODGE TOTAL	\$	808,705.97

COOLIDGE GENERAL STORE

<u>Emergency Funds:</u>	\$	7,614.06
<i>HVAC, Building Repairs, Electrical, Plumbing</i>		
COOLIDGE GENERAL STORE TOTAL	\$	7,614.06

LEGION LAKE LODGE

Cabin Renovation (8)	\$	299,174.48
<u>Emergency Funds:</u>	\$	4,649.40
<i>Plumbing, Building Repairs</i>		
LEGION LAKE LODGE TOTAL	\$	303,823.88

BLUE BELL LODGE

Dorm Renovation	\$	23,790.47
<u>Emergency Funds:</u>	\$	4,478.04
<i>Plumbing, Building Repairs, HVAC</i>		
BLUE BELL LODGE TOTAL	\$	28,268.51

SYLVAN LAKE LODGE

Cabin Renovation from 2017	\$	38,400.00
<u>Emergency Funds:</u>	\$	36,596.46
<i>Building Repairs, Store Repairs, Electrical, Plumbing</i>		
SYLVAN LAKE LODGE TOTAL	\$	74,996.46

Total Expenditures for FYE 10/31/2018	\$	1,223,408.88
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R&M Fund Balance Summary

Actual 2018 Concession Sales	\$	15,452,167.00
R&M Fund Contribution (5%)	\$	772,608.35
Balance Carryover from 2017(Actual)	\$	(38,836.15)
2018 Completed Expenditures	\$	(1,223,408.88)
Balance at the end of 2018 (Forward to 2019)	\$	(489,636.68)

53rd Custer State Park Fall Classic Bison Auction

CLASS	2018 Actual # Sold	% Change in Avg 2017 to 2018	2018 Average	2018 Total \$ Actual	2017 Average	2017 Total \$ Actual	2016 Average	2016 Total \$ Actual	2015 Average	2015 Total \$ Actual
MATURE BRED COWS	20	-22%	\$2,925.00	\$58,500.00	\$3,773.08	98,100.00	\$ 3,456.00	\$ 31,100.00	\$2,266.67	\$ 13,600.00
MATURE OPEN COWS	27	20%	\$2,355.56	\$63,600.00	\$1,968.75	47,250.00	\$ 2,489.00	\$ 94,600.00	\$1,786.36	\$ 19,650.00
2 YEAR OLD BRED HEIFER	2	-31%	\$3,250.00	\$6,500.00	\$4,700.00	18,800.00	\$ 3,740.00	\$ 37,400.00	\$2,450.00	\$ 12,250.00
2 YEAR OLD OPEN HEIFER	19	-9%	\$2,300.00	\$43,700.00	\$2,528.57	35,400.00				
YEARLING HEIFERS	43	10%	\$2,310.47	\$99,350.00	\$2,100.00	18,900.00	\$ 2,790.00	\$ 83,700.00	\$1,846.15	\$ 24,000.00
HEIFER CALF - LIGHT	25	-10%	\$1,479.00	\$36,975.00	\$1,650.00	16,500.00	\$ 2,111.00	\$ 38,000.00	\$1,331.25	\$ 31,950.00
HEIFER CALF - HEAVY							\$ 2,225.00	\$ 44,500.00	\$1,325.00	\$ 15,900.00
BULL CALF - LIGHT	61	-13%	\$1,575.00	\$96,075.00	\$1,800.00	66,600.00	\$ 2,138.00	\$ 44,900.00	\$1,882.05	\$ 73,400.00
BULL CALF - HEAVY	56	-7%	\$1,775.00	\$99,400.00	\$1,900.00	100,700.00	\$ 2,350.00	\$ 86,950.00	\$2,011.90	\$ 42,250.00
YEARLING BULLS	62	-12%	\$2,152.42	\$133,450.00	\$2,452.08	117,700.00	\$ 2,763.00	\$ 110,500.00	\$2,204.29	\$ 77,150.00
2 YR OLD BREEDING BULL	10	24%	\$3,940.00	\$39,400.00	\$3,175.00	57,150.00	\$ 3,250.00	\$ 78,000.00	\$2,738.89	\$ 24,650.00
2 YEAR GRADE BULL	2	8%	\$3,025.00	\$6,050.00	\$2,800.00	8,400.00	\$ 2,781.00	\$ 22,250.00	\$1,990.00	\$ 9,950.00
Mature Bull (3 yr old)	1	28%	\$4,500.00	\$4,500.00	\$3,511.11	31,600.00				
Total Averages			\$2,096.04		\$2,420.00		\$2,645.28		\$1,915.28	
Totals	328			\$687,500.00	255	\$617,100.00	254	\$ 671,900.00	180	\$ 344,750.00
2018 Of the 44 registered bidders we had 26 in-person and 18 online 7 online buyers made a purchase 7 on-site bidders made a purchase Bison went to buyers from South Dakota (8) Minnesota (3), Colorado, Nebraska and Texas					2017 Of the 45 registered bidders we had 31 in person and 14 online 3 online buyers made a purchase 8 on-site bidders made a purchase Bison went to buyers from Nebraska (2) South Dakota (8) Wyoming (2) Montana, Illinois, Missouri, Wisconsin, Montana, Colorado.					

Division of Parks and Recreation
November YTD 2018 Revenue by Item

	2017		2018		%
	Number	Dollar	Number	Dollar	
Annual	56,105	\$ 1,683,155	55,530	\$ 1,665,897	-1%
2nd Annual	14,683	\$ 220,252	14,477	\$ 217,161	-1%
Combo	27,321	\$ 1,229,444	28,911	\$ 1,300,973	6%
Transferable	1,798	\$ 116,868	1,963	\$ 127,598	9%
Daily License	123,490	\$ 673,726	112,191	\$ 673,146	0%
Unattended Vehicle Daily	2,219	\$ 22,188	2,053	\$ 20,534	-7%
GSM Annual Trail Pass	4,459	\$ 66,885	4,619	\$ 69,285	4%
GSM Daily Trail Pass	15,627	\$ 62,506	15,304	\$ 61,216	-2%
Motorcoach Permit	35,218	\$ 105,653	31,148	\$ 93,443	-12%
CSP 7 Day Pass	170,858	\$ 3,417,158	168,549	\$ 3,370,971	-1%
CSP 7 Day Bike Band	21,635	\$ 216,353	21,635	\$ 216,351	0%
Rally Bike Band	28,369	\$ 283,690	31,224	\$ 312,240	10%
One-Day Special Event		\$ 11,100		\$ 17,178	55%
PERMITS	501,782	\$ 8,108,978	487,604	\$ 8,145,993	0%
Camping Services		\$ 8,792,768		\$ 9,051,277	3%
Picnic Reservations		\$ 16,738		\$ 14,488	-13%
Firewood	33,510	\$ 167,549	44,077	\$ 220,385	32%
Gift Card		\$ 11,625		\$ 15,782	36%
LODGING	33,510	\$ 8,988,680	44,077	\$ 9,301,933	3%
TOTAL	535,292	\$ 17,097,658	531,681	\$ 17,447,926	2%

Division of Parks and Recreation
November 2018 YTD Revenue by District

LOCATION	2017	2018	%
Pickerel Lake			
Fort Sisseton			
Roy Lake			
Sica Hollow			
DISTRICT 1	\$ 472,857	\$ 480,334	2%
Richmond Lake			
Mina Lake			
Fisher Grove			
Amsden			
Lake Louise			
DISTRICT 2	\$ 300,869	\$ 294,520	-2%
Pelican Lake			
Sandy Shore			
Lake Cochrane			
Hartford Beach			
DISTRICT 3	\$ 433,269	\$ 486,699	12%
Oakwood Lakes			
Lake Poinsett			
Lake Thompson			
DISTRICT 4	\$ 820,380	\$ 920,453	12%
Lake Herman			
Walker's Point			
DISTRICT 5	\$ 304,537	\$ 326,803	7%
Snake Creek			
Platte Creek			
Buryanek			
Burke Lake			
DISTRICT 6	\$ 441,240	\$ 462,324	5%
Palisades			
Big Sioux			
Lake Vermillion			
DISTRICT 7	\$ 909,533	\$ 900,871	-1%
Newton Hills			
Good Earth			
Union Grove			
Lake Alvin			
Adams			
DISTRICT 8	\$ 598,988	\$ 618,524	3%

LOCATION	2017	2018	%
Lewis & Clarks			
Chief White Cran			
Pierson Ranch			
Springfield			
Sand Creek			
Tabor			
DISTRICT 9	\$ 2,000,988	\$ 2,079,962	4%
North Point			
North Wheeler			
Pease Creek			
Randall Creek			
South Shore			
South Scalp			
Whetstone			
White Swan			
DISTRICT 10	\$ 661,394	\$ 679,631	3%
Farm Island			
West Bend			
DISTRICT 11	\$ 537,968	\$ 533,011	-1%
Oahe Downstream			
Cow Creek			
Okobojo			
DISTRICT 12	\$ 576,776	\$ 539,690	-6%
West Whitlock			
East Whitlock			
Swan Creek			
Indian Creek			
Lake Hiddenwood			
Revheim Bay			
Walth Bay			
West Pollock			
DISTRICT 13	\$ 397,105	\$ 401,358	1%
Mickelson Trail			
Bear Butte			
DISTRICT 14	\$ 174,318	\$ 156,910	-10%
Shadehill			
Llewellyn Johns			
Rocky Point			
DISTRICT 15	\$ 463,498	\$ 492,493	6%
Custer			
DISTRICT 16	\$ 7,038,968	\$ 6,953,784	-1%
Angostura			
Sheps Canyon			
DISTRICT 17	\$ 723,549	\$ 783,236	8%
PIERRE OFFICE	\$ 241,421	\$ 337,326	40%
TOTAL	\$ 17,097,658	\$ 17,447,926	2%

**Division of Parks and Recreation
November YTD 2018 Camping by District**

<i>LOCATION</i>	<i>2017</i>	<i>2018</i>	<i>%</i>
Pickarel Lake	6,576	5,992	-9%
Fort Sisseton	1,537	1,305	-15%
Roy Lake	6,672	6,791	2%
Sica Hollow	197	208	6%
DISTRICT 1	14,982	14,296	-5%
Richmond Lake	1,662	1,551	-7%
Mina Lake	3,104	2,793	-10%
Fisher Grove	1,164	1,095	-6%
Amsden	271	139	-49%
Lake Louise	2,243	2,263	1%
DISTRICT 2	8,444	7,841	-7%
Pelican Lake	5,426	5,302	-2%
Sandy Shore	1,282	1,444	13%
Lake Cochrane	1,984	1,949	-2%
Hartford Beach	5,858	5,773	-1%
DISTRICT 3	14,550	14,468	-1%
Oakwood Lakes	9,635	9,226	-4%
Lake Poinsett	8,614	9,307	8%
Lake Thompson	7,156	7,163	0%
DISTRICT 4	25,405	25,696	1%
Lake Herman	5,935	5,800	-2%
Walker's Point	3,097	3,069	-1%
Lake Carthage	718	710	-1%
DISTRICT 5	9,750	9,579	-2%
Snake Creek	9,314	9,224	-1%
Platte Creek	1,678	1,456	-13%
Buryanek	2,774	2,593	-7%
Burke Lake	49	51	4%
DISTRICT 6	13,815	13,324	-4%
Palisades	5,036	4,712	-6%
Big Sioux	6,307	6,268	-1%
Lake Vermillion	9,649	9,104	-6%
DISTRICT 7	20,992	20,084	-4%
Newton Hills	11,738	11,064	-6%
Good Earth	13	73	462%
Union Grove	1,788	1,661	-7%
DISTRICT 8	13,539	12,798	-5%

<i>LOCATION</i>	<i>2017</i>	<i>2018</i>	<i>%</i>
Lewis & Clark	41,272	40,771	-1%
Chief White Crane	12,280	11,891	-3%
Pierson Ranch	4,767	4,847	2%
Springfield	1,318	1,245	-6%
Sand Creek	142	106	-25%
Tabor	91	41	-55%
DISTRICT 9	59,870	58,904	-2%
North Point	9,938	9,775	-2%
North Wheeler	821	686	-16%
Pease Creek	1,554	1,355	-13%
Randall Creek	7,533	7,272	-3%
South Shore	489	360	-26%
South Scalp	105	72	-31%
Whetstone	436	313	-28%
White Swan	228	231	1%
DISTRICT 10	21,104	20,064	-5%
Farm Island	7,843	7,599	-3%
West Bend	9,838	9,142	-7%
DISTRICT 11	17,681	16,741	-5%
Oahe Downstream	14,437	13,557	-6%
Cow Creek	2,519	2,673	6%
Okobojo	1,510	1,398	-7%
DISTRICT 12	18,466	17,628	-5%
West Whitlock	4,299	4,115	-4%
East Whitlock	99	101	2%
Swan Creek	710	656	-8%
Indian Creek	6,539	7,590	16%
Lake Hiddenwood	458	10	-98%
Walth Bay	33	35	6%
West Pollock	1,131	1,347	19%
DISTRICT 13	13,269	13,354	1%
Bear Butte	1,202	1,095	-9%
DISTRICT 14	1,202	1,095	-9%
Shadehill	6,166	6,057	-2%
Llewellyn Johns	528	585	11%
Rocky Point	5,832	5,874	1%
DISTRICT 15	12,526	12,516	0%
Custer	52,942	52,881	0%
DISTRICT 16	52,942	52,881	0%
Angostura	18,765	18,402	-2%
Sheps Canyon	1,813	1,828	1%
DISTRICT 17	20,578	20,230	-2%
TOTAL	339,115	331,996	-2%

**Division of Parks and Recreation
November YTD 2018 Visitation by District**

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LOCATION	2017	2018	%
Pickerel Lake	34,760	43,329	25%
Fort Sisseton	42,104	45,026	7%
Roy Lake	152,432	159,707	5%
Sica Hollow	18,684	17,359	-7%
DISTRICT 1	247,980	265,421	7%
Richmond Lake	38,248	32,998	-14%
Mina Lake	39,478	39,207	-1%
Fisher Grove	28,809	27,779	-4%
Lake Louise	29,764	30,116	1%
DISTRICT 2	136,298	130,100	-5%
Pelican Lake	23,865	43,978	84%
Sandy Shore	18,618	22,299	20%
Lake Cochrane	13,097	17,856	36%
Hartford Beach	80,968	87,558	8%
DISTRICT 3	136,548	171,691	26%
Oakwood Lakes	74,306	78,389	5%
Lake Poinsett	59,021	67,340	14%
Lake Thompson	42,139	45,235	7%
DISTRICT 4	175,466	190,964	9%
Lake Herman	92,321	90,657	-2%
Walker's Point	40,541	38,786	-4%
DISTRICT 5	132,862	129,443	-3%
Snake Creek	155,635	129,073	-17%
Platte Creek	107,753	110,099	2%
Buryanek	24,474	23,554	-4%
Burke Lake	15,332	17,477	14%
DISTRICT 6	303,194	280,203	-8%
Palisades	89,722	84,643	-6%
Big Sioux	55,031	51,600	-6%
Beaver Creek	25,045	18,656	-26%
Lake Vermillion	102,101	95,948	-6%
DISTRICT 7	271,899	250,847	-8%
Newton Hills	131,636	119,906	-9%
Good Earth	47,364	44,156	-7%
Union Grove	13,801	13,424	-3%
Lake Alvin	37,243	33,295	-11%
Spirit Mound	17,088	15,465	-9%
Adams	36,099	25,637	-29%
DISTRICT 8	283,231	251,883	-11%

LOCATION	2017	2018	%
Lewis & Clark	681,590	697,855	2%
Chief White Crane	59,880	52,053	-13%
Pierson Ranch	69,624	61,535	-12%
Springfield	90,860	89,036	-2%
DISTRICT 9	901,954	900,479	0%
North Point	107,183	98,291	-8%
North Wheeler	14,827	15,174	2%
Pease Creek	35,241	35,394	0%
Randall Creek	43,510	43,354	0%
Ft. Randall Boat Club	16,911	17,237	2%
DISTRICT 10	217,672	209,450	-4%
Farm Island	151,502	147,820	-2%
West Bend	47,391	43,041	-9%
LaFramboise Island	71,551	64,484	-10%
DISTRICT 11	270,444	255,345	-6%
Oahe Downstream	377,815	309,313	-18%
Cow Creek	191,169	193,553	1%
Okobojo	43,205	46,129	7%
Spring Creek	160,254	182,765	14%
DISTRICT 12	772,443	731,760	-5%
West Whitlock	41,621	40,088	-4%
Swan Creek	28,960	21,073	-27%
Indian Creek	61,705	65,848	7%
Lake Hiddenwood	20,751	9,127	-56%
Revheim Bay	50,414	49,090	-3%
West Pollock	55,077	67,765	23%
DISTRICT 13	258,528	252,991	-2%
Bear Butte	24,073	18,415	-24%
DISTRICT 14	24,073	18,415	-24%
Shadehill	42,443	39,961	-6%
Llewellyn Johns	6,092	4,931	-19%
Little Moreau	14,725	14,247	-3%
Rocky Point	87,801	75,139	-14%
DISTRICT 15	151,061	134,278	-11%
Custer	1,840,287	1,871,444	2%
DISTRICT 16	1,840,287	1,871,444	2%
Angostura	187,761	183,396	-2%
Sheps Canyon	47,469	41,631	-12%
DISTRICT 17	235,230	225,027	-4%
TOTAL	6,359,170	6,269,741	-1%