

CITY OF RAPID CITY
CONCESSION AND LEASE AGREEMENT
DINOSAUR PARK

For and in consideration of the terms and conditions hereinafter set forth and the rental payments due hereunder, the City of Rapid City, hereinafter called "City" or "Lessor", and Gift Emporium, hereinafter referred to as "Concessionaire" or "Lessee", do and hereby enter into this Concession and Lease Agreement.

1. Term. The term of this lease shall be for a period of five (5) years commencing January 1, 1996, and terminating on December 31, 2000.

2. Time of Opening. The Lessee must have the concession open commencing no later than May 1st and terminating on or about September 30th of each year with the minimum hours of operation from 10:00 a.m. to 8:00 p.m. May 1st through August 31st and from 12:00 p.m. to 5:00 p.m. during September; however, the Concessionaire may remain open at any other time, if, in his opinion, weather and other conditions permit. Concessionaire must notify the Parks Superintendent if inclement weather or other circumstances prohibit the concessions to be open. Concessionaire may operate said concession only during the hours of sunrise to 10:00 p.m.

3. Premises. The premises covered by this lease agreement are described as follows:

The Concession Building in Dinosaur Park, including all lands within 25 feet of said building that are immediately adjacent thereto

lying east of Skyline Drive, all located in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Two (2), Rapid City, Pennington County, South Dakota.

4. Rent. The Lessee agrees to pay to the City for the use and occupancy of the above-described premises for the term of this lease, an amount not less than Two Thousand Dollars (\$2,000.00) per year plus fifteen percent (15%) of all gross revenues in excess of Twenty Thousand Dollars (\$20,000.00). Such rental shall be paid at the Office of the City Finance Officer on a monthly basis in an amount not less than the following minimum schedule for each year under this lease or any renewal thereof:

Two Thousand Dollars (\$2,000.00) on or before June 10, and fifteen percent (15%) of the gross revenues over Twenty Thousand Dollars (\$20,000.00) on or before July 10, August 10, September 10, and October 10 of each year.

Any additional sums over and above the stated monthly figure to be paid pursuant to the gross revenue will be paid at the time that the last payment for the calendar year is tendered but in no case later than November 1 of each year.

It is specifically agreed that failure to pay the rental when due shall constitute a breach of this agreement and shall be considered grounds for termination of the agreement by the City.

Gross revenues shall include revenues from the sale of souvenirs, curios, food, cigarettes, coin operated binoculars, and any and all other items or services sold

under the direction or supervision of the Concessionaire at said concession.

5. Extension of Term. The Lessee shall have the option of renewing this lease agreement for one five (5) year period by giving written notice of intention to renew to the Lessor on or before October 1, 2000; provided, however, the terms and conditions shall be subject to renegotiation by the parties. If agreement cannot be reached on the renegotiation by the parties on or before December 1, 2000, then and in that event this lease shall be terminated and the Lessee shall have no further rights under this lease.

6. Gross Income Statement. Concessionaire shall present a statement of the gross revenue of the concession for each month at the Office of the City Finance Officer within ten (10) days after the end of each month of operation. Failure to comply shall constitute a breach of this agreement.

It is specifically agreed that no later than January 31 following each year covered by this agreement that the Concessionaire will have a certified public accounting firm determine that the sales as reported to the City reasonably reflect sales of the Concessionaire for the period. The Concessionaire shall also make available on or before January 31 of each year an itemized financial statement showing all receipts for the preceding calendar year, including expenditures for all concession related

operations, to the Finance Officer and Public Works Director for confidential review.

7. Use of the Premises. The Lessee shall use the premises for commercial purposes only. Lessee further covenants that they will abide by and comply with all statutes, ordinances, and municipal regulations relating to the conduct of such business. The Lessee shall not conduct an unlawful business on the premises.

8. Quiet Enjoyment. The Lessee, upon paying the rental and observing the term hereof, shall lawfully, peaceably, and quietly hold, occupy, and enjoy said premises during the term hereof without hindrance, eviction, or molestation by the Lessor or by any person or persons lawfully claiming under the Lessor.

9. Utilities. The Lessee shall pay for all utilities relative to the Concession.

10. Inspection of Records. Concessionaire shall keep accurate records of all sales and receipts in accordance with such bookkeeping systems as City may approve; and City shall have the right to inspect the books, records, and inventories of the Concessionaire at any reasonable time for the purpose of ascertaining the correct amounts due to the City under the terms of this agreement.

11. Scope of Concession. Concessionaire shall provide food service to the general public without discrimination as to race, color, sex, creed, religion, ancestry, national origin, or disability and will not permit discrimination

against any person or group of persons, in any manner prohibited by local, state, or federal laws. Lessee agrees that in the operation and use of the premises, he will not on the grounds of race, color, sex, creed, religion, ancestry, national origin, or disability, discriminate or permit discrimination against any person or group of persons in any manner. Sales shall be limited to food items, souvenirs, curios, and other related items.

The prices charged by Concessionaire for services, goods, food and drink shall be reasonable and shall not be in excess of prices prevailing elsewhere for the same kind and quality of service.

At no time shall Concessionaire sell or give away any alcoholic beverages, or allow any alcoholic beverages to be consumed on the premises.

Concessionaire shall not allow any person to make their residence on the premises, nor shall he permit persons to remain or loiter within the demised premises during the hours of operation.

Concessionaire shall not use or permit the premises to be used for any other purpose, or for any unlawful immoral or indecent activity. Concessionaire shall confine his activities to the area rented by him under the terms of this agreement.

12. Alterations, Repairs, or Improvements.
Concessionaire shall not make any alterations, repairs, or improvements to the concession building or to the area

immediately surrounding said building, without obtaining the prior written consent of the Director of Public Works. Requests to make any alterations, repairs, or improvements shall be made at the expense of Concessionaire and shall become the property of the City.

Concessionaire shall not post any signs without obtaining the prior written consent of the Director of Public Works.

13. Liability and Indemnity. The Lessee agrees to indemnify and save harmless the Lessor from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct or management of the business conducted by the Lessee. Lessor shall not be liable and the Lessee waives all claims for damages to person or property sustained by the Lessee, its agents, servants, invitees, and customers resulting from the condition of the building in which the leased premises are situated or resulting from any accident in or about said building or said leased premises.

14. Insurance. Concessionaire shall purchase and maintain at a minimum the following insurance during the term of this agreement:

Public liability insurance in an amount not less than \$500,000 for injury to one person in one accident and \$1,000,000 for injury to more than one person in one accident.

All insurance required herein shall be secured from an insurance company or companies which shall have been

approved by the City Finance Officer and the City Attorney, and shall name the City as an additional insured therein. All insurance premiums shall be the obligation of, and shall be paid by Concessionaire. All insurance policies and evidence of the initial payments made thereunder shall be delivered to the City Finance Officer at the signing of this agreement, and shall be held by the City for the term of this agreement. During the term of this agreement Concessionaire shall also deposit with the City all evidence of additional premium payments made under said policies. Each insurance policy shall contain a clause whereby the insurance company shall agree to give written notice to the City Finance Officer within thirty (30) days prior to any cancellation alteration of said policy.

15. Inspection by the City. City shall have the right to make inspections at any reasonable time to ensure compliance with this agreement.

16. Destruction of the Premises. In case the building shall be at any time, wholly or partially, destroyed by fire or other unavoidable casualty so that the leased premises shall be unfit for occupation or use; or in the event this building is, wholly or partially, destroyed by any cause whatsoever, excepting the negligence or willful misconduct of the Lessee, rental payments shall be suspended and prorated until such time as the structure is repaired or rebuilt. If the building is damaged, the City shall have no obligation to rebuild or repair.

17. Subletting and Assignments. Concessionaire shall not sublet the whole or any part of the premises, nor assign, hypothecate, or mortgage the lease and concession agreement, or any or all of its right hereunder, without the prior written consent of the City. Assignment shall include any transfer of ownership or rights by operation of law or otherwise.

As a condition of an assignment of the interest of Lessee under this lease, Lessee shall pay to the Lessor thirty percent (30%) of all profit derived from such assignment. Lessee shall furnish Lessor with a sworn statement certified by a public accountant of the items from which such profit is computed and Lessor shall have access of the books, records, and papers of the Lessee in relation thereto.

The Lessee shall be allowed to subtract from the terms of the sale or assignment hereof the depreciated value of all equipment provided by the Lessee as well as the cost of any inventory. Any rent in excess of that paid by Lessee hereunder realized by reason of such assignment shall be deemed an item of such profit. If a part of the price of such assignment shall be in promissory notes, the payment to the Lessor may be, wholly or partially, in such promissory notes but in no greater proportion than that payable to the Lessee, nor have a final payment date beyond the terms of this lease or any extension thereof. On making such assignment and paying such sum to the Lessor, Lessee shall

be discharged from further liability under this lease, provided that all of the terms and conditions hereof shall have been duly performed by him.

18. Maintenance of Premises. The Lessee shall be responsible for all interior maintenance of the premises, including all interior surfaces, and all filters and other routine maintenance items. The City shall be responsible for all structural and exterior maintenance, including maintenance of all mechanical and plumbing systems and the electrical supply system. The parties shall coordinate the complete draining of all water lines, toilet bowls, and tanks when the concession is closed for the winter so that no damage will be caused by the elements.

Lessee will furnish all necessary supplies to the public restrooms and will keep the areas neat, clean, and in an orderly condition, including parking area adjacent to said leased premises as well as property surrounding leased premises.

19. Equipment. Concessionaire shall furnish and install at his own expense, any equipment, materials, furniture, supplies, etc., required by him for the proper operation of the concession. Concessionaire's equipment shall be placed and installed only upon the written approval of the Director of Public Works.

20. Surrender of Premises. At the termination of this lease or any renewal thereof, the Lessee shall surrender the premises quietly and peacefully to the Lessor in as good

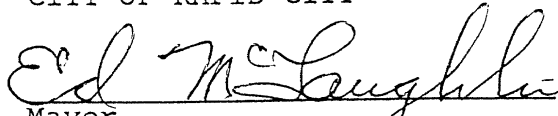
condition as on the date hereof except for normal wear and tear.

21. Breach of Contract. In the event of any breach of any of the terms or provisions of this agreement, the City shall have, in addition to any other recourse, the right to terminate this agreement, to enter and obtain possession of the entire premises, to remove and exclude any and all persons from the premises, and to remove and exclude all property of Concessionaire therefrom, all without service of notice or resort to legal process and without any legal liability on its part.

22. Non-Discrimination. Lessee shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin, or disability discriminate or permit discrimination against any person or group of persons, in any manner prohibited by local, state, or federal laws. Lessee further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

DATED this 16 day of October, 1995.

CITY OF RAPID CITY



Mayor

ATTEST:



Assistant Finance Officer

(SEAL)

GIFT EMPORIUM

BY: Bill Parsons
Its: _____

State of South Dakota)
 SS.
County of Pennington)

On this the 20 day of October, 1995, before me, the undersigned officer, personally appeared Edward McLaughlin and Coleen J. Schmidt, who acknowledged themselves to be the Mayor and Assistant Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Assistant Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jeri Lyn
Notary Public, South Dakota


My Commission Expires:

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the 18 day of October, 1995, before me, the undersigned officer, personally appeared Bill Parsons, who acknowledged himself to be the President of Gift Emporium, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public, South Dakota

My Commission Expires: 9-3-2003

(SEAL)