

PARK CONCESSION AGREEMENT
CANYON LAKE

This Agreement made this _____ day of _____, 2009, by and between the City of Rapid City, a municipal corporation, hereinafter referred to as "City", and Derby Advertising, Inc. dba Canyon Lake Resort, a South Dakota corporation, whose address is 2720 Chapel Lane, Rapid City, South Dakota, 57702, hereinafter referred to as "Concessionaire".

For and in consideration of the covenants and agreements herein contained and of the payments of monies as hereinafter set forth, the parties hereto mutually agree as follows:

1. Right to Occupy and Operate. The City does hereby grant to the Concessionaire the right, and the Concessionaire does hereby accept from the City the right, and agrees to operate a concession at the area known as Canyon Lake Park. Such concession right is a privilege granted by the City subject to the terms and conditions herein.
2. Purpose. The Concessionaire agrees to operate, maintain and rent paddleboats in the concession area. All paddleboats offered for rent and for public use by the concession shall be of number one, first-grade quality. All federal, state, and local regulations pertaining to safety and to quality of products offered for rent must be met by Concessionaire. The Concessionaire shall use the areas herein described only for the purposes stated and for no unlawful purposes whatsoever.
3. Term; Renewal; Hours; Season. The term of this Agreement shall commence on the date of execution of this agreement, and shall be for a period of five (5) years ending on December 31, 2013 unless sooner terminated under the provisions of this Agreement. This Agreement may be renewed for an additional five (5) year period of

time upon terms and conditions to be renegotiated. Renewal proposals shall be submitted to the City in writing on or before October 15th of the year proposed for renewal. The concession shall operate on a daily basis and the annual concession season shall run from the first day of April to and including the first day of November. The concession operation shall not commence before 7:00 am or continue after 10:00 pm of any day.

4. Compensation to be Paid the City. The Concessionaire agrees to pay to the City semi-annual license payments in advance, each in the amount of Three Hundred Fifty Dollars (\$350) payable on or before January 1 and July 1 of the concession season.

5. Utilities. Concessionaire shall pay the cost of all utility services incidental to the operation of the concession at a metered, or flat rate where applicable, and shall permanently install at its own expense in accordance with all city and state requirements, any utilities necessary for its operation at the concession area. Said installed utilities shall become the property of the City upon installation and shall remain affixed to the concession area.

6. Indemnity. The Concessionaire agrees to indemnify and save harmless the City from all lawsuits, claims, damages, and actions of any kind or nature arising directly or indirectly on the part of the Concessionaire, its agents, employees, contractors, and suppliers out of its operations under the agreement.

7. Liability Insurance. The Concessionaire agrees that the City shall be saved harmless from any and all liability arising from any operation under this Agreement and to purchase and maintain personal injury and property damage insurance for each occurrence of injury or damage in the minimum amount of Two Million Dollars (\$2,000,000) for personal injury with a Two Million Dollar (\$2,000,000) general

aggregate limit. The City shall be named an additional insured in said policy or policies, and the Concessionaire shall furnish to the City evidence of insurance by a certificate of insurance for required coverage.

8. Inspection. The City reserves the right to inspect at any reasonable time the concession structure, paddleboats, and premises to assure and verify compliance with all city and state laws and regulations and with any other terms or conditions of this Agreement.

9. Sanitation. The Concessionaire shall keep all fixtures, equipment and personal property used in the operation of the concession, whether owned by the Concessionaire, the City, or third parties, and all concession areas, in a clean, sanitary, and orderly condition at all times and shall conduct the concession strictly in accordance with state and local health requirements. All janitorial services necessary in the concession area shall be the responsibility of the Concessionaire. The Concessionaire shall collect trash and garbage at the end of each day in which the concession is open for any period greater than one hour, or more often as directed by the Parks and Recreation Director or his designee, within the entire area of the concession as designated by the Park Concession Map on file in the Rapid City Department of Parks and Recreation Office and incorporated herein by reference. The Concessionaire shall provide adequate garbage receptacles to store trash and garbage for pickup by the Concessionaire. The Concessionaire will dispose of trash collected from concession areas and deposited in sealed containers in locations designated by the City.

10. Improvements; Equipment; Construction; Maintenance. No structures or improvements shall be located upon public property except a dock and a ticket booth. At any time the City Parks and Recreation Director or this designee may require the

Concessionaire to perform maintenance and repair or replacement under the above requirements if, in his opinion, such work is reasonably required and necessary.

All construction, repair, restoration, and maintenance required of the Concessionaire shall at all times meet the requirements of the departments of health, building, and fire of the City and all construction shall be coordinated with and approved by the Rapid City Parks and Recreation Director or his designee. The Concessionaire shall not install any additional booths, stands, fixtures, mobile units, or any other equipment or structures in connection with the business covered by this Agreement in addition to those contemplated herein without the consent of the Parks and Recreation Director or his designee.

11. Supervision and Operation. The Concessionaire shall provide adequate adult supervision at all times during operation and restrict operation of paddleboats to such areas of the lake as may be established and marked by the City in the sound discretion of the Parks and Recreation Director or his designee. All operations shall be conducted in a manner consistent with the park atmosphere at Canyon Lake Park.

12. Service and Compliance with Laws and Regulations. The Concessionaire shall provide service to meet seasonal public demand, subject to any reasonable orders, rules, and regulations concerning the conduct and management of the business that may be made by the Parks and Recreation Director or his designee.

13. Assignment. The Concessionaire shall not assign or transfer its rights and privileges granted under this Agreement, either in whole or in part, without first obtaining the written consent of the City.

14. Termination. The City may terminate this concession agreement and may repossess the concession site in the event any payment herein agreed to be made is in

arrears and remains unpaid for a period of fifteen (15) days after the same is due. Or in the event any of the other provisions, terms or conditions of this agreement have been violated upon giving ten (10) days written notice to the Concessionaire to cure the violation and the City's intention to so terminate and, at the end of said ten (10) days, all the rights of the Concessionaire hereunder shall terminate unless said violation is cured to the satisfaction of the Parks and Recreation Director, his designee, or other agents or officials of the City.

Such termination shall not waive the right of the City to recover damages from the Concessionaire for its failure to comply with the terms of this Agreement. The acceptance of monies due the City for any period or periods after a default or any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver on the part of the City. No waiver or default by the City of any of the terms, covenants, or conditions hereof shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Concessionaire.

15. Removal on Termination. On the date of termination hereof, or in case of the termination of the relationship created by this Agreement prior thereto, the Concessionaire shall have the right to remove from said premises all personal property, fixtures, and equipment not a part of the real estate, installed by and title to which the Concessionaire retains; subject, however, to any valid lien or claim which the City may have for unpaid fees provided, also, that if said removal causes any damage to the premises, said Concessionaire will repair the same in a proper and satisfactory manner at its own expense.

16. Non-Discrimination. The Concessionaire 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. The Concessionaire further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

17. Severability. If any provision of this Agreement shall be invalid for any reason, such invalidity shall not affect the remaining provisions herein, the parties to this Agreement hereby declaring that they would have agreed to the other provisions of this Agreement notwithstanding such invalidity.

DERBY ADVERTISING, INC.

CITY OF RAPID CITY

Mike Derby, President

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
) ss.
County of Pennington)

On this _____ day of _____, 2009, before me the undersigned officer, personally appeared Mike Derby, President of Derby Advertising, Inc., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
) ss.
County of Pennington)

On this _____ day of _____, 2009, before me the undersigned officer, personally appeared Alan Hanks and James Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and they as such Mayor and Finance Officer, being authorized so do to, 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)