

**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, 2007, and terminating on December 31, 2012.

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 (SE¹/₄NW¹/₄) 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, 2012; 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, 2012., 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 Parks and Recreation 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 it 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 Parks & Recreation. 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 defend, 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:

A. Worker's Compensation coverage required by law, including Employer's liability insurance of not less than:

Bodily Injury by Accident	\$100,000.00 Each Accident
Bodily Injury by Disease	\$100,000.00 Each Employee
Bodily Injury by Disease	\$500,000.00 Policy Limit

B. Commercial General Liability Insurance with a Combined Single Limit of Liability of not less than:

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	\$1,000,000.00
Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

C. Commercial automobile insurance for owned autos, hired and non-owned automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000.00) each person and One Million Dollars (\$1,000,000.00) aggregate.

D. Commercial umbrella insurance providing excess liability over primary coverage of employer's liability commercial general liability, and commercial automobile liability limits

of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate.

E. Additional insurance regulations. Each Insurance policy shall include the following conditions by endorsement to the policy:

(i) Each policy shall require thirty (30) day prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to CITY by certified mail to: City Finance Officer, 300 Sixth Street, Rapid City, South Dakota, 57701, or to such address as the CITY may designate in writing. The Lessee shall also notify CITY in a like manner within ten (10) days of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Lessee.

(ii) Companies issuing the insurance policy, or policies shall not recourse against the CITY for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Lessee.

(iii) The Term "CITY" shall include all elected officials, boards, commissions, divisions, departments, and offices of the CITY and individual members and employees thereof in their official capacities, and while acting on behalf of the CITY.

(iv) The CITY shall be endorsed to the required policy or policies as an additional insured.

(v) The policy clause "Other Insurance" shall not apply to any insurance policy coverage currently held by the CITY, to any future coverage, or to the CITY's self-insured retentions of whatever nature. Lessee and Lessor each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for the loss of or damage to such waiving party or its property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Lessee and Lessor shall give noticed to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

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 ____ day of _____, 2006.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

GIFT EMPORIUM

By:_____
Bill Parsons, President

State of South Dakota)

SS.

County of Pennington)

On this the ____ day of _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)

SS.

County of Pennington)

On this the ____ day of _____, 2006, 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:

(SEAL)