

DINOSAUR PARK CONCESSION AGREEMENT

This Agreement is by and between the City of Rapid City ("City"), a South Dakota municipal corporation of 300 Sixth Street, Rapid City, SD 57701, and Hisega LLC dba Dinosaur Park ("Concessionaire"), a South Dakota corporation of 23897 Sun Country Lane, Rapid City, SD, 57702. This Agreement is effective once the signatures of both of the parties are affixed to this Agreement. 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 to occupy a certain outlined area within Dinosaur Park ("Concession Area") for the purposes stated within this Agreement. The boundaries of the Concession Area are outlined in blue in Attachment A. Such concession right is a privilege granted by the City subject to the terms and conditions herein.

The Concession Building in Dinosaur Park, include 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 1/4NW) of Section Two, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. Purpose. Concessionaire shall provide concession 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. 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 its activities to the area rented by it under the terms of this Agreement.

3. Term, Hours, and Season. The term of this Agreement will commence on January 1, 2023, and will end on December 31, 2027, unless it is terminated sooner under the provisions of this Agreement. Any future agreements between the parties related to the Concession Area shall be under the terms and conditions mutually agreed to by the parties at that time.

The Concessionaire shall operate the visitor center on a daily basis. The 2023 concession season shall run from May 1 to and including September 30. The 2023, 2024, 2025, 2026 and 2027 concession seasons shall run from May 1 to and including September 30. The concession shall not operate outside of that date range, unless the Concessionaire receives written permission from the Parks and Recreation Director or his/her designee.

Concessionaire agrees to maintain the following hours of operation:

May:	9:00 a.m. to 5:00 p.m.
June and July:	8:00 a.m. to 8:00 p.m.
August:	8:00 a.m. to 6:00 p.m.

September: 9:00 a.m. to 5:00 p.m.

The Concessionaire may remain open at any other time, if in its opinion, weather and other conditions permit. Concessionaire must notify the Parks and Recreation Director if inclement weather or other circumstances prohibit the concession to be open by May 1st. Concessionaire may operate said concession only during the hours of sunrise to 10:00 pm.

4. Compensation to be Paid to the City. The Concessionaire agrees to pay to the City for the use and occupancy of the above-described premises for the term of this Agreement an amount not less than Two Thousand Dollars (\$2,000) 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 Rapid City Finance Office on a monthly basis in an amount not less than the following minimum schedule for each year under this Agreement or any renewal thereof:

Two Thousand Dollars (\$2,000) on or before June 10 and fifteen percent (15%) of the gross revenues over Twenty Thousand Dollars (\$20,000) 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 may be considered grounds for termination of the agreement by the City. Gross revenues shall include revenues from the sale of souvenirs, curios, food, coin operated binoculars, and any and all other items or services sold under the direction or supervision of the Concessionaire at said concession.

5. Gross Income Statement. Concessionaire shall present a statement of the gross revenue of the concession to the Rapid City Finance Office for each month 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, 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. Said statements shall be made available to the Rapid City Finance Office and the Parks and Recreation Director for confidential review.

6. Utilities. Concessionaire must 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.

City shall be responsible for costs associated with operation of the fire suppression room for six months each year, from October through March. Concessionaire shall be responsible for the costs to operate the fire closet the remaining six months each year, from April through September. Concessionaire shall timely remit payment for all utility costs throughout the entire year and City shall reimburse Concessionaire for the costs City is responsible for, pursuant to this provision.

City shall be responsible for all electrical energy costs associated with the operation of the parking lot lights.

7. Indemnify, Defend, and Hold Harmless. The Concessionaire agrees to defend, indemnify, and hold harmless the City, its elected officials, employees, and agents 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.

8. Liability Insurance. The Concessionaire agrees 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. The certificate of insurance of required coverage shall state that the City shall be given any notice of cancellation at least 30 days prior to any cancellation, unless the cancellation is for nonpayment of premiums. The Concessionaire's insurance coverage shall be primary to any insurance coverage maintained by the City. The Concessionaire's insurance coverage shall not seek contribution from any insurance coverage maintained by the City.

9. Inspection. The City reserves the right to inspect at any reasonable time the concession structure, visitor center, 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.

10. 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 the Concession Area, 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, both inside and immediately outside the building, 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/her designee, within the entire Concession Area. The Concessionaire shall provide adequate garbage receptacles to store trash and garbage for daily pickup by the Concessionaire. The Concessionaire will dispose of trash collected from the Concession Area and deposited in sealed containers in locations designated by the City. City shall provide a 300-gallon trashcan for use by Concessionaire on the premises and City will empty the trash bin on a regular schedule, at no cost to Concessionaire.

11. Improvements, Equipment, Construction, and Maintenance. No new or additional structures or improvements shall be located upon public property. At any time, the City Parks and Recreation Director or his/her 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 be in accordance with the Rapid City Municipal Code, and all construction shall be coordinated with and approved by the Rapid City Parks and Recreation Director or his/her 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/her designee.

City will maintain the parking lot surface, parking lot lights, and fire suppression room at city expense. Concessionaire shall be responsible for watering flowers and to maintain the appearance of the area in front of the building. City shall mow the grass around the building and regularly collect trash in the parking lot and bottom of the hill.

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/her 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 Parks and Recreation Director or his/her designee.

14. Termination. The City may terminate this Agreement and may repossess the Concession Area 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. 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/her 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 the Concession Area 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.

18. Contacts. Anything required by this Agreement to be delivered to City in writing shall be delivered to the following contacts. The contact for Dinosaur Park Gift Shop is: Chuck and Vicki McLain, 640 Skyline Drive, Rapid City, SD 57701 City has a continuing obligation to ensure that the Director of Parks and Recreation has accurate contact information for Concessionaire and to notify the Director of any changes to the contact information herein.

Unless otherwise specified in this Agreement, the contact for the City will be: Director of Parks and Recreation, 515 West Boulevard, Rapid City, SD 57701, (605) 394-4175.

19. City Authority. All matters pertaining to the terms of this Agreement shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota. The City Council appoints and delegates the Director of Parks and Recreation as the primary contact point for City with Concessionaire in administering and fulfilling the terms of this Agreement.

20. Relationship between the Parties. This Agreement does not create any employee/employer relationship between the City of Rapid City and Concessionaire, its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Concessionaire and City, and no agent of Concessionaire shall be the agent of City. Concessionaire covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

21. Integration. The parties agree that this Agreement, along with any attachments, constitutes the entire understanding between the parties and supersedes all prior negotiations, agreements, and understandings, whether oral or written.

22. Choice of Law. This Agreement shall be governed by the laws of the State of South Dakota and any action to enforce the terms of this Agreement shall be venued in the 7th Judicial Circuit, Pennington County, South Dakota.

23. Waivers. The failure by one party to require performance of any provision of this Agreement shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

24. Amendments. This Agreement may only be amended by a written document duly executed by both parties.

25. Headings. The headings and numbering of the different sections of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of any provision.

Dated this 28th day of December, 2023.

DINOSAUR PARK GIFT SHOP

Chuck McLain Vicki McLain
Chuck and Vicki McLain, Owners

STATE OF Florida)
COUNTY OF Pinellas) : SS

On this the 28th day of December, 2023, before me, the undersigned officer, personally appeared Chuck McLain, who acknowledged himself to be the Owner of Hisega LLC dba Dinosaur Park, and that he, as such Owner being authorized so to do, executed the foregoing instrument for the purposes therein contained.

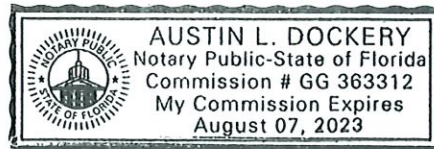
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Austin L. Dockery

Notary Public, South Dakota

Florida
My Commission Expires: 8/07/2023

(SEAL)



Attachment A Dinosaur Park

