

Concession Agreement

CITY OF DEADWOOD CONCESSION AGREEMENT Between THE CITY OF DEADWOOD and CATERING BY DAVE, LLC

THIS CONCESSION AGREEMENT, (hereinafter referred to as the "Agreement"), is entered into between The City of Deadwood operating through its Department of Public Works (hereinafter referred to as the "City") and its Director, and Catering by Dave, LLC, a South Dakota limited liability company, (hereinafter referred to as the "Concessionaire").

PART A- SPECIAL CONDITIONS AND COVENANTS OF AGREEMENT

A-1 GRANT OF CONCESSION

The City hereby grants to the Concessionaire for the full term of this Agreement upon the conditions, limitations, reservations and provisions herein, the exclusive concession right and privilege to operate a year-round business to be located at the Deadwood Event Complex located at 15 Seventy-Six Drive, Deadwood, South Dakota 57732. The Concessionaire shall be entitled to operate a business at said location subject to the terms of this Agreement, which shall consist of food and beverage sales (excluding alcohol); options to operate a full service catering business; the selling of any additional retail goods shall be limited to food and beverage and shall be approved in advance by the Deadwood City Commission.

A-2 CONCESSION PREMISES

The Concession Premises shall include buildings within the "Deadwood Event Complex". Such property shall hereafter be referred to as the "Concession Premises" or the "Premises". Concessionaire shall have the exclusive right to the use of the Concession Spaces within the premises buildings, and the rights to the public areas and seating areas to sell food and beverage (excluding alcohol), herewith defined as the "Common Areas" in this Agreement. Map attachment 'A' shows concession premises.

A-3 PERIOD OF PERFORMANCE; TERM OF AGREEMENT

This Agreement shall commence upon execution by the Deadwood City Commission and shall be for a maximum of five (5) years. The parties have the option of entering into an additional five (5) year agreement by mutual agreement of CITY and CONCESSIONAIRE based on performance. The annual renewal rate to be paid by CONCESSIONAIRE for the five (5) year period will be determined, changed or adjusted by mutual agreement, in writing, of the parties. If the parties cannot agree to the annual rate prior to the end of the original contract term, the annual rate to be paid by CONCESSIONAIRE shall remain the same for the next five (5) year option. The other terms and conditions of this contract will continue in effect unless modified in writing by agreement of the parties.

A-4 **CONSIDERATION**

The Concession right and privilege granted herein for the term as specified, is given in exchange for the Concessionaire's:

- a. Making monthly payments called for under the terms of this Agreement.
- b. Providing concession equipment and services sufficient to reasonably satisfy the intent of this Agreement that Concessionaire operate a concession for all of the events scheduled at the Deadwood Event Complex.
- c. Satisfying all other conditions and requirements imposed on the Concessionaire by this Agreement.

A-5 **DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meanings set forth below unless the context clearly indicates a different meaning is intended:

- a. "City" means The City of Deadwood and its Department of Public Works, any division, section, unit or entity of that Department and any of the officers or other officials lawfully representing the Department.
- b. "Concessionaire" means the party granted exclusive concessionaire rights and privileges under this Agreement.
- c. "Director" as used herein in regard to the making of inspections, or interpretations; the granting or acquisition of permission, consent, approval, rights, and acting on discretionary matters, etc., shall mean the City's Director of Public Works or such official's designee.
- d. "Common Areas" shall mean the parking lot, grounds, walkways and public non-restricted seating areas.
- e. "Deadwood Event Complex" shall mean all of the City of Deadwood owned property encompassed by Seventy-six Drive and Crescent Street.

A-6 **RECORDS BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT**

- a. The Concessionaire shall maintain at the Concession Premises a separate set of books, records, documents and other evidence reflecting all business activity conducted at the Concession Premises, including cash register tapes, credit card charge records and any other such data which in the sole opinion of the Director sufficiently and properly reflect the receipt of funds by Concessionaire from all sources and applicable taxes collected and remitted.

Concessionaire's records shall also reflect all expenditures by Concessionaire in the performance of its duties under this Agreement. These records shall be subject to inspection by the City, with or without notice, and to review and audit by the Department, the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract.

- b. Upon the request of the City, the Concessionaire shall promptly provide, at Concessionaire's expense, all data determined by the City to be reasonably necessary to enable the City to fully comply with any and every requirement of the State of South Dakota or the United States of America for information or reports relating to this Agreement and to the Concessionaire's use of the Concession Premises. Such data shall include, if required, a detailed breakdown of the Concessionaire's receipts and expenses.
- c. The Concessionaire shall retain all books, records, documents, cash register tapes, credit card records and other material relevant to this agreement for two (2) years after the expiration or termination of this Agreement, and make them available for inspection by persons authorized under this provision at such times and on such forms as the City may require furnished periodic reports.
- d. Concessionaire shall not commingle with the records of the Concession business permitted under this Agreement, with records of any business conducted at a location outside the Concession Premises.
- e. The Concessionaire shall enter all sales on a type of cash register that contains a tape that records and identifies the date, type of sale, and the amount of each transaction; that is equipped with a cumulative, non-alterable accounting control mechanism.
- f. Concessionaire shall not change record keeping methods or change or discontinue use of a cash register, without the Director's written authorization.

A-7 FINANCES/PAYMENTS

- a. Monthly Percentage Payment to the City
On or before the 10th day of each month, the Concessionaire shall remit to the City as a Concession Fee and record of the gross receipts for each month in which the Concessionaire is authorized to engage in business under this Agreement, a sum equal to ten percent (10%) percent of Concessionaire's Gross Receipts for each event. Gross Receipts are defined as revenues received by Concessionaire from all sources for activities conducted on the Concession Premises pursuant to this Agreement. Also, on or before the 10th day of each month, Catering by Dave shall remit to the City as a monthly rental fee of one thousand and NO/100ths dollars (\$1,000.00) for the above term. In addition, Concessionaire shall be responsible for and make timely payment of the costs of utility services to the premises during the term of this agreement.
- b. Place of Payment
All payments to the City shall be paid to The City of Deadwood Finance Office, 102 Sherman Street, Deadwood, SD 57732. A written statement prepared by Concessionaire on forms approved by the City shall accompany each payment, reflecting receipts received, less sales taxes collected.

A-8 OPERATION AND SERVICES

a. Concession Services

The Concessionaire shall sell quality food and beverages; schedule and provide full maintenance of the concession premises; employ, train, and supervise personnel with appropriate qualifications and experience to assist in such functions; perform or supervise employees in the performance of all other tasks related to the operation, maintenance of the concession premises; and pay for and obtain all licenses and permits necessary for the operation of the concessions granted. The Concessionaire may offer the sale of additional items from the Concession Premises but shall be limited to food and beverage and approved by the Deadwood City Commission.

b. Hours of Operation

The Concessionaire shall operate and keep the Concession Premises open to the public according to a schedule that has been mutually agreed upon by the Concessionaire and the Director.

c. Exclusions from Operation

The Concessionaire shall not sell any alcohol. Alcohol during events held at the Deadwood Event Complex is the sole responsibility of the Event Coordinator.

A-9 ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are attached. No other understandings, oral or otherwise may modify the text or an attachment to this Agreement.

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

PART B - GENERAL TERMS AND CONDITIONS

B-1 ACCOUNTING MONTHS AND YEAR

The Concessionaire shall utilize calendar year accounting year for the business operated at the Concession Premises.

B-2 ADMINISTRATIVE CHARGES DUE TO LATE PAYMENT

If any payment is not paid to the City within ten (10) days after the date due, the Concessionaire shall be in breach of this Agreement. In addition to the other remedies available to the City in the event of breach, the Concessionaire shall pay an administrative late charge of Fifty Dollars (\$50.00) shall be added to any such late monthly payment. Provided, however, that the City's acceptance of a late payment charge shall not be in lieu of its other remedies under this Agreement.

B-3 SECURITY DEPOSIT

The Concessionaire shall, prior to commencing operation and for the full term of operation hereunder, deposit with The City of Deadwood Finance Office One Thousand Dollars (\$1,000.00), or shall provide in a form acceptable to the City, a contract performance bond payable to The City of Deadwood Finance Office, in the amount of One Thousand Dollars (\$1,000.00) as a security for the faithful performance of and compliance with all the terms and conditions of this Concession Agreement. In the event that the deposit of security with the City for payment of such costs, disbursements, and expenses shall not in any manner be considered as payment for any concession fees due or to become due under this Agreement, or in any manner release the Concessionaire from any concession fees to be paid, or from any of the obligations herein assumed. If all terms and conditions are fully complied with by the Concessionaire, then any security deposit shall be returned to the Concessionaire at the expiration of this Agreement.

B-4 PRICE LIST

The location of points of sale, methods of sale, and prices charged for commodities sold or business transacted on the Concession Premises shall be professionally posted and displayed in full view of the public at all times.

B-5 UTILITIES

The City shall pay all charges for water and sewer at the Concession Premises. The Concessionaire shall pay all charges for point of sale, lights, heat, internet connections, and phone service or installations, disconnections, and service calls for any utility serving the Concession Premises. The Concessionaire, at concessionaire's expense, shall obtain a business telephone having at least one telephone line, the telephone number for which shall be publicly displayed at the Concession Premises, and shall be the same number published in all promotional advertising and telephone listings. A cellular phone is acceptable.

B-6 TAXES

The Concessionaire shall pay before delinquency, all taxes, levies, and assessments of any nature and kind whatsoever arising as an incidence of this Agreement.

B-7 CUSTODIAL/GROUNDS MAINTENANCE OF CONCESSION PREMISES

Concessionaire shall at its own expense, at all times, keep the Concession Premises and areas within twenty-five (25) feet thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable.

Concessionaire shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this agreement; Concessionaire shall provide or perform all necessary janitorial service to adequately maintain the inside and outside of such areas including concession seating. Concessionaire shall be responsible for keeping the areas within twenty-five (25) feet of the perimeter of such areas free of litter and clean of spills resulting from concession operations. The concessionaire shall be obligated to maintain a regular cleaning schedule, as well as a regular extermination service schedule. Garbage collection within the concession premises and within twenty-five (25) feet of the premises shall be maintained by the Concessionaire and disposed into a dumpster provided by the Event Coordinator. The Concessionaire shall not pay for garbage service during the term of this agreement.

If, after City provides written notice to the Concessionaire of Concessionaire's failure to comply with this Section within five (5) days, Concessionaire fails to take good care of such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Concessionaire shall promptly pay the entire actual cost thereof as an Additional Charge. City shall have the right to enter the concession premises for such purposes.

All major and minor repairs necessary to maintain the building (excluding the major structural and infrastructure aspects, and the exterior of the Building), in the concession premises, including the utility, electric and plumbing and other systems and equipment serving the building and the premises in a reasonably good operating condition, as determined by City, shall be performed by Concessionaire at its expense with approval from the Director.

B-8 EQUIPMENT, FURNISHINGS, and EXPENDABLES

All equipment and other personal property used by the Concessionaire at the City's Concession Premises shall remain the property of the Concessionaire under the conditions and provisions of this Agreement.

As a courtesy, City shall at no cost to the Concessionaire, provide certain equipment (which shall remain the property of the City) as specified in the City-Owned Equipment List (Attachment B) Nothing in said agreement shall delegate responsibility of providing the necessary equipment to operate the concession to the City. City reserves the right at any time to replace any and all items of City-owned equipment at the concession premises with functionally equivalent equipment.

If, upon termination of the agreement, the City does not renew said agreement, Concessionaire shall have the right to remove its own equipment, furnishings, and expendables, but not improvements, from the concession premises and shall be allowed a period of (10) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of City.

Concessionaire shall flush all sink drains with hot water at least once a week. Floor sweepings, grease, or debris of any sort shall not be directed down any floor or other sinks. Caustic drain cleaners shall not be used. City will remove drain blockages; however, if in the Director's opinion, said blockage was caused by Concessionaire's failure to observe said procedures, Concessionaire will receive a ten (10) days written notice to correct such deficiencies. If Concessionaire fails to correct such deficiencies by the end of the ten (10) days, the Director may, in its sole discretion, terminate the agreement and all terms and conditions contained therein.

B-9 Signs and Advertisements:

Concessionaire shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of City property without the prior written approval from the Building Supervisor, who may require the removal or refurbishment of any sign previously approved. Certain signs and advertisements may also require the prior written approval of the Sign Commission or other appropriate agencies.

Upon the expiration or termination of the agreement, concessionaire shall, at its own expense, remove or paint out, as the Building Supervisor may direct, any and all of its signs and displays on the premises and in connection therewith, and shall restore said premises and improvements thereto to the same condition as prior to the placement of any such signs or displays.

Concessionaire shall place a sign at the facilities, in a prominent place, stating that the concession is operated under a Concession Agreement issued by City through the Department of Public Works.

B-10 Health Department Compliance

Concessionaire shall obtain a Health Department License and comply with all Health Department regulations and inspections during the period of this contract.

B-11 Schedule of Operation

Concessionaire shall be open for business during all City approved special events scheduled for the Deadwood Event Complex. The hours of operation of the concession premises shall coincide with the hours of the event scheduled and the hours of operation shall be coordinated between the Concessionaire and the Event Organizer.

Event Organizers submit application for use of the Deadwood Event Complex a minimum of forty-five days in advance of use of the facility and often months in advance of the use. This allows for planning of the event and coordination amongst all parties involved in the event including the Concessionaire. A component of the facility use agreement is a guaranteed dollar amount of two hundred and fifty (\$250.00) dollars per day to the Concessionaire when the concession is requested by the Event Organizer. If the event does not produce the two hundred and fifty dollars per day, the event organizer shall be required to cover the shortfall to the Concessionaire. The guaranteed dollar amount shall be paid to the Concessionaire if events are canceled within 72 hours of the event as the concessionaire has at that point prepared for the event taking place. If the event is canceled prior to 72 hours from the event the Concessionaire shall not be guaranteed the two hundred and fifty (\$250.00) dollars per day.

The City currently has events that have taken place for several consecutive years at the Deadwood Event Complex. These events will require concession service:

- Deadwood Snocross – January
- Back When They Bucked – May
- PBR – June
- NAJA Shrine Circus - June
- Days of 76 Rodeo – July
- Three Wheeler Motorcycle Rally – July
- Badlands Steer Roping – August
- Kool Deadwood Nites – August

Concessionaire must also understand that additional events may be proposed throughout the year and would be added service dates for this agreement. The Chamber will communicate to the concessionaire as soon as possible when an additional event has been added to the schedule; again the City currently requires a forty-five day in advance application.

B-12 INSURANCE

The Concessionaire shall secure and maintain during the full term of this Agreement, at no expense to the City, insurance by one or more companies authorized to do business in the State of South Dakota, as follows:

- a. Fire and Extended Coverage Insurance: A policy for fire and extended coverage, vandalism, malicious mischief, and special extended coverage insurance in forms and with insurance companies approved by the City Attorney and City Risk Manager providing coverage of not less than the full replacement value of the Premises, which value shall be determined by the Concessionaire and the City.

Any loss under such insurance shall be payable to the City, and shall be applied to the cost of rebuilding, repairing, replacing, or restoring the Concession Premises.

- b. General Liability Insurance

A policy for commercial General Liability insurance, primary to any other insurance, and under which:

- (1) Liability limits shall be in at least the following amount(s):
\$1,000,000 bodily injury, each occurrence, and \$500,000 property damage, each occurrence, or \$1,000,000 combined single limit bodily injury and property damage; provided, that in the event the Director deems such insurance to be inadequate to fully protect the Concessionaire and the City, the Concessionaire shall increase said liability limits and may increase the maximum deductible, all to such amounts as the Director annually shall deem reasonably adequate to provide said protection, which increase shall be completed within sixty (60) days after the date of notice that the Concessionaire's insurance is deemed to be inadequate.
- (2) Coverage shall provide against all risk liability for any injury, death, damage and/or loss of any sort sustained by any person, organization or corporation (including the Concessionaire and any of its officers, employees and agents) in connection with any act or omission upon, or use or occupancy of the Premises under this Agreement, and shall include, but need not be limited to the following types (described in insurance industry terminology):
 - (a) Premises operations liability;
 - (b) Blanket contractual liability;
 - (c) Property damage;
 - (d) Independent contractor;

- c. City Named as Additional Insured: The City shall be named as an additional insured in the following manner in all policies of insurance to be secured and maintained pursuant to this Agreement.

The City of Deadwood shall be added as an additional insured for all coverages provided by this policy of insurance and shall be fully and completely protected by this policy for any claim, suit, injury, death, damage or loss of any sort whatsoever tangible or intangible including consequential damages sustained by any person, organization or corporation in connection with activity upon or use or occupancy of the Concession Premises, as well as any activity performed by the principal insured under an Agreement with the City.

The coverage provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise changed in any respect without providing at least thirty (30) days prior written notice to The City of Deadwood, Finance Office 102 Sherman Street, Deadwood, SD 57732.

- d. Worker's Compensation: In addition to the above coverage, the Concessionaire shall provide Worker's Compensation coverage for its employees in accordance with South Dakota State laws and Department of Labor rules and regulations.
- e. Evidence of Insurance: The Concessionaire shall deliver to the Director, a copy of all policies required under this Agreement hereof, and all endorsements thereto or other evidence to the reasonable satisfaction of the City Risk Manager that the Concessionaire has secured or renewed and is maintaining insurance as required by this Agreement, as follows:
 - 1. The effective date of this Agreement; and
 - 2. Within five (5) City business days prior to the expiration or renewal date of each such policy; and
 - 3. Within five (5) City business days after the Concessionaire's receipt of a written request therefore.
- f. Assumption of Risk: The placement and storage of personal property on the Premises shall be the responsibility, and at the sole risk, of the Concessionaire.
- g. Concessionaire's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Concessionaire's liability hereunder nor to fulfill the Concessionaire's obligations under this Agreement. Notwithstanding said policies of insurance, the Concessionaire shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Concessionaire, or any of its agents, officers and employees or through use or occupancy of the Concession Premises.

- h. Termination Upon Failure to Insure: Notwithstanding any other provision of this Agreement, the failure of the Concessionaire to comply with the above provisions of this section shall subject this Agreement to immediate termination at the discretion of the Director without notice to any party, if it is necessary to protect the public interest.
1. Indemnification: The Concessionaire shall indemnify and hold the City free and harmless from liability from any and all claims, demands, losses, and any death, injury or disability of any person and/or damage to any property or business occurring on or about the Concession Premises during the Concessionaire's use and occupancy thereof or arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of the Concessionaire or any of its officers, employees or contractors. In the event of suit against the City, Concessionaire shall appear and defend the same, provided Concessionaire is notified in a timely manner of the suit. In the event judgment is rendered against the City, the Concessionaire shall cause the same to be satisfied within ninety (90) days after a final determination thereof, including a final determination of any appeals.

B-13 ASSIGNMENT OF AGREEMENT

The Concessionaire shall not assign or transfer this Agreement, in whole or in part, or otherwise convey any concession right or privilege granted hereunder or any part of the Concession Premises unless the approval of the Director in writing is first obtained.

B-14 STANDARDS

The Concessionaire, its agents and employees, shall render courteous service to the public with a view of adding to the public use and enjoyment of the Concession Premises.

The Concessionaire shall operate and conduct the facilities on the Concession Premises in a businesslike manner and will not permit any acts or conduct on the part of the Concessionaire's employees that would be detrimental to the operation of the Concession Premises.

B-15 CLOSURE OF CONCESSION PREMISES

The City reserves the right to close the Concessionaire's operation or any portion thereof for the convenience of the City upon a seven (7) day notice to the Concessionaire and to close the Concession Premises or any portion thereof without notice to meet any emergency as determined by the Director. In the event of any such closure, the City shall post a sign notifying the public of the impending or effective closure. In the event of such closure, the City shall reimburse the Concessionaire for any remaining interest the Concessionaire may have in the Concession Premises measured by Concessionaire's investment in inventory made by Concessionaire within the Concession Premises.

B-16 SURRENDER OF PREMISES AND REMOVAL OF CONCESSIONAIRE'S PROPERTY

- a. Upon termination or expiration of this Agreement, the Concessionaire shall surrender the Concession Premises to the City and promptly surrender and deliver to the City all keys that it may have to any and all parts of the Concession Premises.

- b. The Concession Premises shall be surrendered to the City in as good a condition as at the date of execution of this Agreement, except for the effects of reasonable wear and tear, alterations, and repairs made with concurrence of the City, or property damaged or destroyed by an insured peril where insurance proceeds have been paid to the City.
- c. The Concession Premises shall be returned free of all of the personal property of Concessionaire and in a neat, clean and in reasonable repair condition.
- d. In the event that after termination or expiration of this Agreement the Concessionaire has not removed its property and fixtures the City may, but need not, remove Concessionaire's personal property and hold it for the Concessionaire, or place the same in storage, all at the expense and risk of the Concessionaire, and Concessionaire shall reimburse the City for any expense incurred by the City in connection with such removal and storage. The City shall have the right to sell such stored property, without notice to Concessionaire, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first, to the cost of sale; second, to the payment of the charges for storage; and third, to the payment of any other amounts which may then be due from the Concessionaire to the City; the balance, if any, shall be paid to the Concessionaire.

B-17 LIENS AND ENCUMBRANCES

The Concessionaire shall keep the Concession Premises free and clear of any liens and encumbrances of any kind. At the City's request, the Concessionaire shall furnish the City written proof of payment of any item which would or might constitute the basis for such a lien on the Concession Premises if not paid.

B-18 ENTRY

The City and its agents may enter the Concession Premises at all reasonable times for the purpose of inspecting or repairing the same, but this right shall impose no obligation upon the City to make inspections to ascertain the condition of the Concession Premises or to make repairs.

B-19 NOTICES

Unless otherwise directed in writing, notices, reports, and payments shall be delivered to the City at the following address:

City of Deadwood Finance Office
102 Sherman Street
Deadwood, SD 57732

And to the Concessionaire at the following address:

Catering by Dave, LLC
11235 Back Nine Court
(possible PO Box)
Lead, SD 57754

B-20 DEFAULT OR FAILURE OF CONSIDERATION

The City may terminate this Agreement for cause, and take immediate possession of the Concession Premises in the event that the Concessionaire shall have failed to perform any of the obligations arising under this Agreement and such default or deficiency in performance either:

- a. Was not remedied by the Concessionaire within the time period specified in the City's notice (if any) or otherwise set forth in this agreement to correct the default or deficiency or suffer termination, which period, in each instance, shall be reasonable, given the nature of the default or deficiency and the difficulty of remedying the same; or
- b. Was the subject of two written default notices from the City within the previous six (6) months; provided, that the Concessionaire shall not be in default of any requirement hereof where the Concessionaire's failure to perform in a timely manner has been caused, without fault of Concessionaire, by government delay in the issuance of any necessary government permit.

B-21 TERMINATION FOR CONVENIENCE

In addition to termination for cause and termination on expiration of the term hereof, this Agreement may be terminated by either party for convenience, by the giving of advance written notice to the other party. No such termination shall be effective earlier than thirty (30) days after the receipt of the termination notice by the receiving party. Termination under this provision shall not relieve Concessionaire for any duty or obligation owed to the City under the terms of this Agreement.

B-22 TIME

If the last day for the performance of any obligation under this Agreement falls upon a non-City business day, including Saturday, Sunday or official city legal holiday, the final day for performance shall be the City next business day.

B-23 WAIVER

Absent a specific written waiver signed by the Director, the City shall not be deemed to have waived any right the City has under the terms of this Agreement with respect to any breach or default by Concessionaire. Such a written waiver shall be confined to its specific terms. Waiver of any obligation arising under the Agreement shall not be deemed a waiver of any other provision of the Agreement or of the Concessionaire's full compliance with the terms and conditions of the Agreement. No waiver will be implied from the any knowledge the City may have of any breach, default, or non-compliance by Concessionaire. The City's failure to enforce any provision of this Agreement shall not be deemed as waiver or consent.

B-24 CHANGES AND MODIFICATIONS

The parties hereto reserve the right to amend this Agreement from time to time by mutual agreement in writing. No amendment hereto shall be effective unless in writing and signed by an authorized representative of each of the parties.

B-25 APPROVALS BY THE CITY OR DIRECTOR

The granting of approval or consent by the Director to any action of Concessionaire does not constitute the taking of any official action, including the granting of approval, by any other City department or official, where other department's or official's action is required by law, ordinance, resolution or rule or regulation.

B-26 CONDITION OF PREMISES

The City and Concessionaire acknowledge that they have jointly examined the Concession Premises. Concessionaire accepts the Concession Premises in their present condition as of the date of commencement of this Concession Agreement.

B-27 SEVERABILITY

Should any term, provision, condition or other portion of this Agreement or any provision of any document incorporated by reference be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the remainder shall continue in full force and effect.

B-28 SUCCESSORS IN INTEREST

Unless otherwise provided, the terms, covenants, and conditions in this Agreement shall apply to and bind the Concessionaire and any and all heirs, successors, executors, administrators, and assigns of the Concessionaire, all of whom shall be jointly and severally liable with the signatory to this Agreement.

[Signatures and acknowledgements on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Concession Agreement to be executed by their respective representative(s):

Dated this 19th day of May, 2025.

CITY OF DEADWOOD

Charlie Struble-Mook, Mayor

ATTEST:

Jessica McKeown, Finance Officer

Dated this _____ day of May, 2025.

Catering by Dave, LLC

By: President

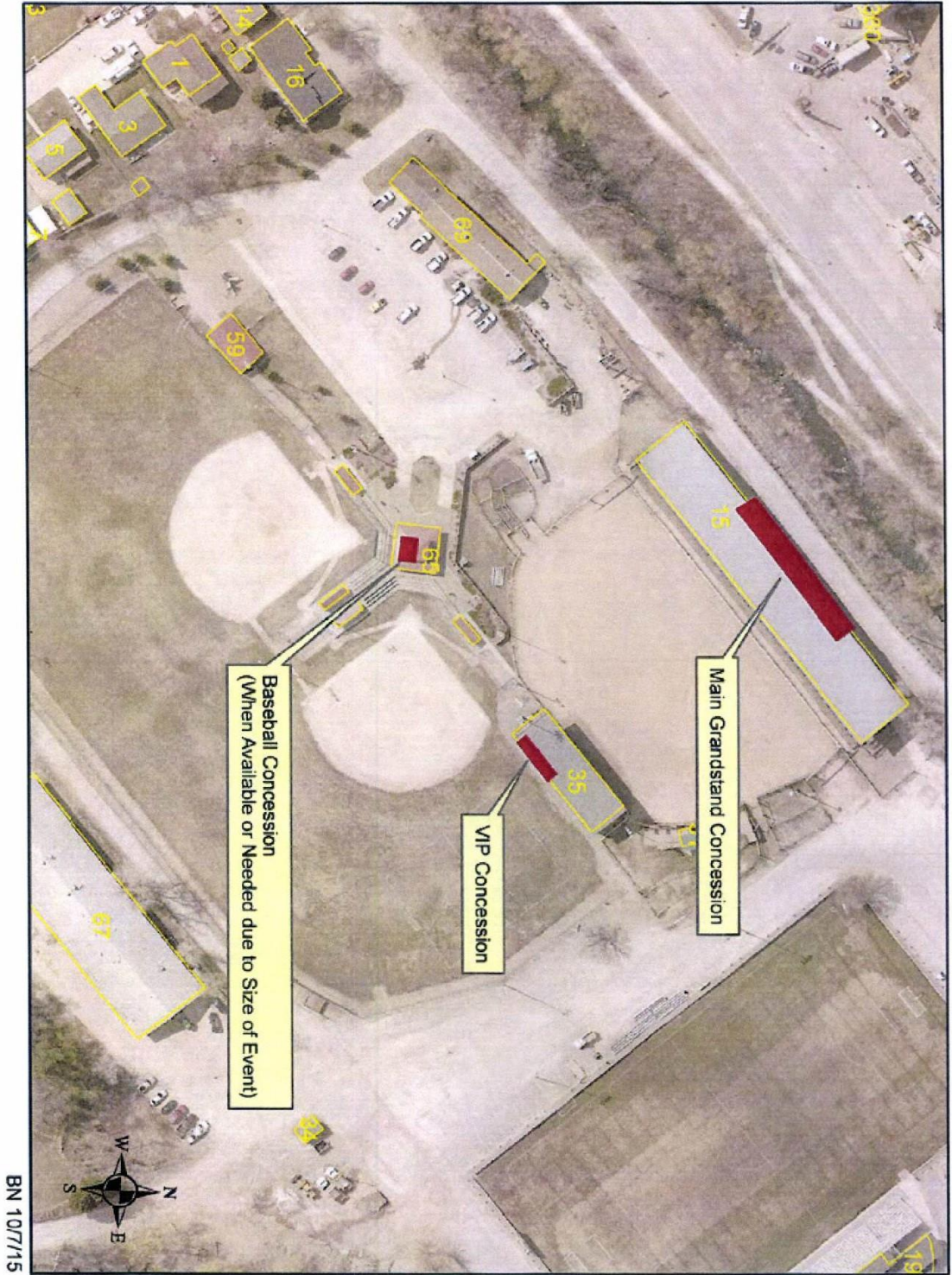
State of South Dakota)
) SS
County of Lawrence)

On this _____ day of May, 2025, before me, the undersigned officer, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

(SEAL)

Notary Public
My Commission Expires: _____



Attachment B
Concessionaire Agreement

<u>QTY</u>	ITEM
1	Hoshizaki ice machine
2	70 quart coolers cold plates
3	72 inch wire shelves
3	60 inch stainless tables
2	54 inch wire shelves - black
2	36 inch wire shelves - black
1	Nacho cheese warmer
1	Norlake upright fridge
1	Norlake chest fridge
1	36" grill
1	48" grill
1	2 basket pitco fryer
1	2 lamp food warmer
1	Popcorn machine
1	3 step ladder
1	36 inch gas grill VIP
1	60 inch freezer VIP