

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION

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THIRD AMENDMENT OF CONCESSION LICENSE

The City and County of Denver, hereinafter referred to as the "City", acting by and through its Manager of Parks and Recreation, hereinafter referred to as the "Manager," pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor's Cabinet, hereby amends the October 3, 2006, Concession License (Clerk Filing # 06-873), as amended October 9, 2007 and September 22, 2009 (Clerk Filing # 06-873-A) with Concessionaire **Pahaska Tepee Concessions, LLC, by H. W. Stewart, Inc.**, for the Pahaska Tepee at Buffalo Bill Gravesite in Jefferson County, Colorado ("Concession License"), as specified below. Concessionaire, by execution of this Amendment of Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same.

06-0873-5

1. That Sub-sections C., D., E. and J. of Section IV. of the Concession License shall be amended to now read as follows:

"IV. CONCESSIONARE'S RESPONSIBILITIES:

\* \* \* \*

C. Maintenance: At the sole expense of the Concessionaire, maintenance of the Concession Site is to be provided by Concessionaire as follows:

1. *General Interior Cleaning* – The Concession Site shall be maintained in good condition. All floors and floor coverings shall be vacuumed, swept, or mopped, as appropriate, on a regular basis and when needed, and interior walls and interior wall coverings shall be cleaned on a regular basis and when needed. All floors and interior wall surfaces that are exposed to water or regular washing shall be sealed, and the seal maintained, so as to prevent any structural damage to the facilities. Furnishings and equipment shall be dusted or cleaned on a regular basis and when needed. All doors, windows, and window glass shall be cleaned on a weekly basis.

2. *Equipment Maintenance* – Concession facilities must be maintained and serviced as needed to insure proper function and appearance including but not limited to appliances, hardware, and plumbing fixtures. Electrical fixtures, light bulbs, and other electrical appliances shall be maintained in an operating and safe condition.

3. *Flag Display* – Concessionaire shall obtain, maintain and properly display

federal, state and City of Denver flags.

4. *Garbage Removal* – All garbage and trash shall be removed from the premises on a regular basis. Concessionaire shall furnish the necessary trash receptacles and collection equipment (other than dumpsters). The dumpsters and other trash receptacles shall be maintained in an enclosed area away from public view and sealed so as to prevent intrusions by wild animals. Concessionaire is further responsible for arranging and paying for trash removal/hauling from the Concession Site.

5. *Premises Maintenance* – Grounds within 100 feet of the Pahaska Tepee, including the Buffalo Bill Gravesite, and related support areas shall be cleaned of litter and garbage on a daily basis. Concessionaire shall be responsible for snow removal on all sidewalks, stairs and paths, including the path to the Buffalo Bill Grave site. Concessionaire shall be responsible for assuring that access to and from the Concession Site is safe for walking and ice free.

6. *Landscaping* – All mowing or trimming of grass around Pahaska Tepee and the care of any flowers or other plantings installed by Concessionaire.

7. *Public Rest Rooms* – All rest rooms are to be cleaned and supplies provided on a daily basis. Trash and debris within the restroom shall be regularly collected and properly disposed of. All surfaces shall be swept, washed, and sanitized as needed. At closing the restrooms are to be inspected to assure that they are vacant before locking, and at opening the restrooms shall be unlocked and inspected to determine if they are clean and properly supplied.

8. *Graffiti* – Prompt graffiti (stickers, marker and paint) removal from all exterior surfaces.

9. *Rodent and Pest Control* – The Pahaska Tepee shall be maintained free of rodents and pests.

10. *Tools and Supplies* – All tools, equipment, and cleaning and janitorial supplies kept on site for maintaining the Concession Site shall be stored in a safe location, not accessible by the public, and used in a manner that protects the public from any injury or harm. All toxic, hazardous, or flammable materials or waste shall be stored, handled, used, and disposed of in a manner that conforms with all federal, state, and local laws and regulations.

11. *Site Gate* – During daylight hours and operating hours of the Concession Site and the Buffalo Bill Museum, the site entry gate shall be unlocked and opened seven days a week, but shall be closed and locked otherwise, after clearing the parking lot of vehicles, unless other arrangements are made with the Buffalo Bill Museum.

12. *Septic System Service* – Concessionaire shall share in fifty percent (50%) of the costs of servicing the septic system for Pahaska Tepee. The City will send an invoice for Concessionaire’s share of the costs, and payment is due within thirty (30) days of the invoice.

13. Otherwise, Sub-section 2.4.e. of the Terms and Conditions (see Section XI below) shall be applicable.

D. Utilities: Concessionaire shall pay, promptly when due, all natural gas, electric, telephone, alarm monitoring, and satellite or cable TV or internet connection and service charges and related taxes for the Concession Site. Concessionaire shall pay fifty percent (50%) of the water and sewer bills for Pahaska Tepee. The City will send an invoice for Concessionaire’s share of the water and sewer bill on a quarterly basis. Payment to the City is due within thirty (30) days of the invoice.

E. Security and Safety: Security and safety shall be the responsibility of Concessionaire, at Concessionaire’s sole expense, for the Pahaska Tepee and the immediate surrounding area, including parking lots, 24 hours a day, seven days a week. This shall include monitoring, inspection and servicing of fire alarm and suppression systems, fire extinguishers, and burglary alarm systems and the provision of security services whether provided through a private security company retained by Concessionaire or provided by Concessionaire’s employees who live in residential facilities in Pahaska Tepee. If Concessionaire elects to provide security through live-in staff, then provision of such housing is subject to the requirements and conditions of Sub-section IV.F. below. All security plans are subject to the prior written approval of the Manager. Fire alarm and suppression systems, fire extinguishers, and burglar alarm systems are to be regularly monitored, inspected for compliance with manufacturer’s specifications and fire code requirements, and maintained and repaired as needed and fire extinguishers replaced as needed. Proof of inspection of all fire alarm and suppression systems and fire extinguishers shall be provided to the City. **Any damage to Pahaska Tepee or injury to Concessionaire’s employees, agents, or guests due to failure to perform or failure to properly or timely perform these security obligations shall be the sole legal and financial liability of Concessionaire.**

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J. Capital Improvements & Repairs:

1. Concessionaire Contributions for City-Made Improvements: Upon the Third Amendment becoming effective, Concessionaire shall promptly tender the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00) to the City for future capital improvements to be made by the City to Pahaska Tepee. The improvements selected and made by the City shall be at the sole discretion of the Manager, and work on the improvements will be managed and directed by the City.

2. Repairs: Concessionaire shall be responsible for paying the first one thousand dollars (\$1000.00) of each repair made to the Concession Site, including but not limited to repairs to structure, finishes, fixtures, appliances, and mechanical, heating, electrical, and plumbing systems and parts. Obligations to maintain, service or repair otherwise stated as being the responsibility and cost of Concessionaire under this Section IV shall not be subject to the \$1000 limitation. All non-emergency repairs shall require prior approval of the Manager. For emergency repairs, Concessionaire shall make reasonable efforts to get prior approval from the Manager, but if not possible, then the Manager must be notified immediately after the repair and a justification of any costs over \$1000 provided.

2. That Section V of the Concession License shall be amended to now read as follows:

V. CITY'S RESPONSIBILITIES: The overall operation of Lookout Mountain Park, in which Pahaska Tepee is located, shall remain under the supervision and authority of the City. The following responsibilities with respect to Pahaska Tepee will be undertaken by the City, subject to appropriation and availability of funds:

A. Septic: The City shall arrange for and pay the contractor for any septic system service at Pahaska Tepee and shall send an invoice to Concessionaire for the Concessionaire to pay fifty percent (50%) of the costs.

B. Water and Sewer Service: The City shall receive all water and sewer bills for Pahaska Tepee and shall send an invoice to Concessionaire on a quarterly basis for Concessionaire to pay fifty percent (50%) of the costs.

C. Snow Removal in Parking Lot: Subject to equipment and manpower availability, City shall plow the snow in the parking lots next to Pahaska Tepee.

D. Repairs: The City shall pay for the cost any single repair made by Concessionaire to the extent the cost exceeds one thousand dollars (\$1,000.00) with the Concessionaire paying the first one thousand dollars (\$1,000.00). Non-emergency repairs costing over one thousand dollars (\$1,000.00) must be pre-approved by the Manager in order to qualify for reimbursement, and emergency repairs costing over one thousand dollars (\$1,000.00) that could not be pre-approved by the Manager must be found acceptable by the Manager after the repair is made.

E. Trees: The City will maintain all trees in and around Pahaska Tepee. No trees are to be cut or removed without the prior written permission of the Manager.

F. Terms & Conditions: The City shall perform the obligations and have the right to exercise all authority set forth in the Terms and Conditions (see Section XI below).

3. That Section VI of the Concession License shall be amended to now read as follows:

“VI. TERM:            EFFECTIVE DATE:            EXPIRATION DATE:  
                                  October 1, 2006                    December 31, 2015

Unless revoked in accordance with Section 7 of the Terms and Conditions (Section XI below).”

4. That Sub-section B. of Section VIII. of the Concession License shall be amended to now read as follows:

“VIII. COMPENSATION TO BE PAID TO CITY: All of the following forms of Compensation shall be paid by Concessionaire to the City in the manner and at the times specified:

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B. During the first five years of the Term of the Concession License, eight percent (8%) of Gross Revenues for all food, beverage, cookout receipts, film, printed material (including books), and DVD’s, and ten percent (10%) of Gross Revenues on all other merchandise and Concessionaire’s share of machine income. During the remainder of the Term of the Concession License, eight point four percent (8.4%) for food, beverage, cookout receipts, film, printed material (including books), and DVD’s, and ten point five percent (10.5%) of Gross Revenues on all other merchandise and Concessionaire’s share of machine income. (Collectively referred to as “Percentage Payment.”) Said Percentage Payment to be paid in accordance with the following schedule:

First Quarter:            Payment due April 25<sup>th</sup> for January, February & March  
Second Quarter:        Payment due May 25<sup>th</sup> for April, June 25<sup>th</sup> for May, and July 25<sup>th</sup> for June  
Third Quarter:           Payment due August 25<sup>th</sup> for July, September 25<sup>th</sup> for August, and October 25<sup>th</sup> for September  
Fourth Quarter:         Payment due January 25<sup>th</sup> for October, November & December”

5. That Sub-section D of Section VIII is hereby deleted and no longer in effect.

6. That a new Section XII be added to read as follows:

XII. LEGAL AUTHORITY: Concessionaire warrants and guarantees that Concessionaire possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Concession License. The person or persons signing and executing this Agreement on behalf of Concessionaire, do hereby warrant and guarantee that he/she or they have been fully authorized by Pahaska Tepee Concessions, LLC, and H.W. Stewart, Inc., to execute this Concession License and to validly and legally bind Pahaska Tepee Concessions, LLC, and H.W. Stewart, Inc., to all the terms, conditions and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Concession License, if there is a reasonable dispute as to the legal authority of either Concessionaire or the

person(s) signing the Concession License to enter into this Concession License or to legally bind Pahaska Tepee Concessions, LLC, and H.W. Stewart, Inc.

7. As herein amended, the Concession License is hereby ratified and reaffirmed in all particulars, and all provisions not otherwise modified by express language above, including all bonding and insurance requirements, shall remain in full force and effect. This Third Amendment shall be effective upon the date that the Third Amendment is fully executed by the City.

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SIGNATURE BLOCKS START ON THE NEXT PAGE.]**

**Contract Control Number:** PARKS-RC67001-03

**Contractor Name:** Pahaska Tepee Concessions, LLC by H.W. Stewart, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PARKS-RC67001-03

**Contractor Name:** Pahaska Tepee Concessions, LLC by H.W. Stewart, Inc.

By: William S. Carle

Name: William S. Carle  
(please print)

Title: President H.W. Stewart Inc.  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

