



CITY OF TRINIDAD
TRINIDAD, COLORADO

S P E C I A L M E E T I N G

There will be a Special Meeting of the City Council of
the City of Trinidad, Colorado, on Tuesday, February 24, 2015,
at 1:30 p.m. in the
Council Chambers at City Hall

The following items are on file for consideration of City Council:

- 1) Executive Session - To discuss the purchase, acquisition, lease, transfer, or sale of real, personal or other property interest under C.R.S. Section 24-6-402(4)(a) – Monument Lake Resort 2015 Operations Proposal by Westland Resources, LLC
- 2) Consideration of Monument Lake 2015 Operations Proposal

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting Audra Garrett, City Clerk, 135 N. Animas Street, Phone (719) 846-9843, or FAX (719) 846-4140. At least a 48 hour advance notice prior to the scheduled meeting would be appreciated so that arrangements can be made to locate the requested auxiliary aid(s).



CITY OF TRINIDAD, COLORADO
1876

COUNCIL COMMUNICATION

CITY COUNCIL MEETING: February 24, 2015
PREPARED BY: Audra Garrett, ACM/City Clerk
DEPT. HEAD SIGNATURE: *Audra Garrett*

SUBJECT: Monument Lake Resort 2015 Operations Proposal - Westland Resources, LLC

PRESENTER: Mike Robb, Westland Resources, LLC

RECOMMENDED CITY COUNCIL ACTION: Consider the proposal for possible approval

SUMMARY STATEMENT: By contract Westland Resources, LLC, is required to submit an Operations Proposal for the season before February 1st.

EXPENDITURE REQUIRED: No.

SOURCE OF FUNDS: N/A

POLICY ISSUE: Contract terms.

ALTERNATIVE: N/A

BACKGROUND INFORMATION:

The City entered into a long-term agreement with Westland Resources, LLC in 2008, which may be terminated by either party. In the initial years of the agreement, the parties both put money towards improvements to the property pursuant to the terms of the agreement. The terms of the agreement have been met by both parties to date.

Council has 30 days in which to accept, accept with modification or reject the Plan.

**AMMENDMENT FOR CLARIFICATION
2015 OPERATIONS PROPOSAL
WESTLAND RESOURCES, LLC**

City of Trinidad
FEB 20 2015
City Clerk's Office

SUMMARY OF CONSERVATION AND PROJECT FUND

This summary provides the amounts of contributions and the amounts of funds allocation to projects at Monument Lake Resort.

Total contributions from 2008 to 2014 total \$21849.00

Funds allocations were made in 2014 to the Dock Construction project in the amount of \$14745.98. Leaving a balance of \$7103.52

Westland Resources, LLC had applied for and was awarded the Colorado Motorboat Grant through the Colorado Division of Wildlife in the amount of \$7225.53. This amount was credited back to the Conservation and Project Fund leaving a balance \$14329.05.

Funds allocation was made to the Full Service RV Improvement Project in the amount of \$14329.05. Leaving a balance of \$00.00.

SUMMARY OF CONSERVATION AND PROJECT FUND

2008	\$ 3,256.00
2009	\$ 3,286.00
2010	\$ 3,300.00
2011	\$ 2,999.50
2012	\$ 3,056.50
2013	\$ 2,968.00
2014	\$ 2,983.00
	\$21,849.00
Funds Allocated to Dock Project	\$14,745.98
Balance	\$ 7,103.52
Motorboat Grant Reimbursement	\$ 7,225.53
Balanced	\$14,329.05
Funds Allocated to Full Service RV Improvements	\$14,329.05
Balance	\$ -

SUMMARY OF IMPROVEMENTS AND REPAIRS 2014

This summary provides all improvements completed at Monument Lake Resort for 2014.

Improvements to the 15 full service RV spaces included new installation of 50-30-20 amp electric pedestals, and replacement of all underground wiring and installation of the main controlling service. Also included the installation of concrete basins for the sewer connections, installation of and repair of necessary sewer pipe and connections, and the purchase and construction of new picnic tables, and roadway and site landscaping. Total cost of \$42907.44.

Repairs and other improvements total \$16942.09. Included in this are the renovations in the restaurant, replacement of the motor at the fish station, other repairs and improvements.

This is a total of \$59849.53.

Funds allocation from the Conservation and Project Fund in the amount of \$14329.05 leaving a balance of \$45520.48 for contribution to lease payment.

SUMMARY OF LEASE CONTRIBUTION 2014

Full Service RV Improvements	\$ 42,907.44
Repairs and Other Improvements	\$ 16,942.09
	\$ 59,849.53
Funds Allocation from Conservation and Project Fund	\$ 14,329.05
Lease Contribution for 2014	\$ 45,520.48

SUMMARY OF LEASE CONTRIBUTIONS 2008 THROUGH 2014

The total lease contributions for 2008 through 2014 is \$308,490.50. This amount is in surplus of the lease requirements of \$30,000.00 per year in the amount of \$98,490.50. Details of these contributions have been submitted by Westland Resources, LLC to the City of Trinidad as part of the Annual Operations Proposals. The details of these contributions and surpluses have been presented as credited to future and total lease amount. With the exception of the 2015 Operations Proposal which includes the 2014 lease contribution summary all Operations Proposals have been reviewed and accepted by the City as presented.

SUMMARY OF LEASE CONTRIBUTIONS 2008 THROUGH 2014

2008	\$ 58,079.54
2009	\$ 42,505.66
2010	\$ 65,455.76
2011	\$ 19,552.22
2012	\$ 35,182.62
2013	\$ 42,194.22
2014	\$ 45,520.48
Total	\$308,490.50

SUMMARY OF WESTLAND RESOURCES, LLC DONATION

The gate at the main entrance at Monument Lake Resort was installed several years ago to secure the property at night during the off season. The gate has well served the purpose. However the gate must be opened each morning and closed each night. In order to aid the economics of this process Westland Resources, LLC will donate an automatic gate device. Estimated cost of \$3500.00.

SUMMARY OF OTHER PROJECTS

The City had contracted to repair two damaged vegas in the roof structure of the Miramonte, and replace the roof on cabin 303. The roof was replaced on the cabin but the vegas were not replaced, because of complications with the contractor. The City is in the process of working towards accomplishing this repair.

**MONUMENT LAKE RESORT
OPERATIONS PROPOSAL
2015**

**WESTLAND RESOURCES, LLC
JANUARY 30, 2015**

City of Trinidad

JAN 30 2015

City Clerk's Office

**OPERATIONS PROPOSAL
MONUMENT LAKE RESORT
2015**

Opening day: May 15, 2015

Closing day: September 13, 2015 (Closing day may vary depending on weather)

RATES

Season Park Pass \$30.00

Day Pass \$7.00

Winter day pass \$3.00

Motel \$109.00

Cabins \$119.00

Cabin with kitchenette \$129.00

Double Occupancy

Additional Persons \$8.00 ea.

All rates per night plus applicable tax

RV Full hookup \$32.00

RV partial hookup \$26.00

RV no hookup \$20.00

Tent camping \$20.00 per tent

RV dump station \$5.00

All rates per night plus applicable tax

Phone ahead for reservations for rooms, cabins and RV hookup sites

RV no hookup and tent sites are on first come first serve

Pedal boat rental \$15.00/hour

Fishing boat rental

\$85.00 per day 2 person boat

\$55.00 1/2 day

Rental includes electric trolling motor and life vests

All rates plus applicable tax

All persons aboard rentals are required to wear a life vest/ no exceptions

SERVICES OFFERED

Fishing

Motel and cabin rentals

Camping for RV and tent campers

Fishing and pedal boat rentals

Furnish equipment for various games and activities, horseshoes, baseball, volley ball, etc.

Restaurant serving 3 meals daily. Change from full service to partial service.

Mira Monte utilized for meetings, banquets, wedding receptions, etc.

Store by the Shore will offer fishing tackle, bait, sundries, groceries, beverages, beer, etc.

Boat rentals

Large field below dam utilized for company picnics and other large functions.

Game room and vending machines.

MARKETING AND MERCHANDISING

Informing and educating potential park patrons about what the park is, services and activities offered, and future plans and progress of those plans is the number one priority of Westland's marketing strategy. The Monument Lake Resort website serves as the primary avenue to accomplish this. Marketing will be conducted on a local and regional basis, through direct contact and mail, print media which includes magazines and newspapers. Several national lodging and resort websites have added to internet exposure.

The web address is www.monumentlakeresort.com

PERSONNEL

Resort operations will require 14 employee positions. Additional duties during peak season will be supplemented with part time help on an as needed basis. Typical employee numbers 22. Personnel are key to the success of any business. Pursuit of quality individuals to fill positions is of high priority. The following is a list of job title and description:

General Manager:

Responsible for overall resort operation including restaurant and motel. Conducts all human resource duties, book keeping, overall planning and budgeting, and purchasing.
Assist Main Desk
, Groundskeeper and Head Chef in planning.

Grounds Keeper:

Care of grounds, trash, general repairs, daytime security, etc.

Main Desk:

Oversee motel and cabins including housekeeping, reservations and desk duty, event planning,.

Food and Beverage Manager:

Responsible for restaurant management. Menu planning, catering, personnel, sanitation, and event planning.

Chef's Assistant:

Assists Head Chef in menu planning and meal preparation, oversee kitchen help, bus and wait staff.

Breakfast and lunch cook:

Kitchen cook and supervisor for breakfast and lunch meals, coordinate with Head Chef and Assistant.

Wait Staff:

Serve as hosts and wait on tables, table prep, sanitation.

Bus and Kitchen helpers:

Responsible for assisting in kitchen duties, plating food, fetching ingredients, sanitation, washing dishes etc.

Store Clerk Boat HQ:

On duty in Store by the Shore as retail clerk, responsible for boat rentals and maintenance of boats and accessories.

Housekeeping:

House keeping and laundry for motel and cabins, house keeping for all other facilities.

Night Security:

Responsible for night security and wildlife conflicts.

SECURITY, SAFETY, AND LAW ENFORCEMENT

A set of Resort Regulations have been developed which includes guidelines to help prevent wildlife conflicts and recommendations for conduct if one is involved in a conflict, especially with bears. Wildlife awareness, and conflict prevention and response will be included in staff training, as well as seminars and short programs designed for patrons sponsored by the Colorado Division of Wildlife. An Emergency Evacuation Plan has been developed. Copies of the resort regulations will be provided to all who enter the park. Anyone violating resort regulations will be given one warning. Should they not respond to this warning they will be subject to fine or asked to leave the resort. If further escalation of a situation occurs the Sheriff's department will be called. In the case of wildlife conflicts or infractions the Colorado Division of Wildlife will be called.

A copy of Rules and Regulations, and evacuation plan are located in each room in the Resort information notebook.

Outline of Safety protocol submitted with previous plan.

CONSERVATION

The conservation fund generated by the sale of resort passes 2014 is \$2983.00. These funds will be used for installation of campground and other improvements, and conservation devices and practices. Summary of dock construction and fund attached.

2015 funds generated will be allocated to purchase of road base.

The Natural Resource Conservation Service has conducted a Baseline Resources Inventory and Evaluation so that we may build a conservation plan for the park. This inventories all natural resources, assesses their condition, and makes recommendations for improvements. This report serves as the base for all campground renovations and improvements. Submitted with previous plan.

FISH HATCHERY

City was successful with second grant submittal for Assessment and has been completed. The planning grant was submitted by the city and was successful.

OTHER GRANTS

Westland Resources, LLC was successful in a grant application, to build new floating boat docks, through the Colorado Division of Parks and Wildlife, Motorboat Program and was awarded a grant total of \$15000.00, Westland Resources, LLC will contribute \$8000.00 as matching funds and in kind. Total project Funds from the Conservation Fund built up by Westland will be utilized for the matching and in kind contribution. Materials for the docks have been purchased and construction has begun but weather has put it on hold. 2014 all floating sections have been completed, anchor structures and attachments are completed.

2014 CONSTRUCTION AND EXPENDITURES

Upgrade full service RV spaces. Install 50-30-20 amp panels for each site, and pour concrete basins for sewer connections, leveling and some landscaping, build up main road to allow easier access to sites, include 1 picnic table for each site. COMPLETED by Westland Resources, LLC

Restaurant service mode will change from full service to partial service. Customers will place their order at the counter and food will be brought to the table, customer will serve themselves at the beverage center with the exception of alcoholic beverages. Will modify current wait staff enclosure to include open order counter and beverage center. COMPLETED by Westland Resources, LLC

Buff and refinish floor in restaurant as well as table tops will be coated with epoxy finish. COMPLETED by Westland Resources, LLC

2015 CONSTRUCTION AND EXPENDITURES

We have no projects in mind for 2015. Will be conducting general maintenance and repairs and have allotted \$10,000.00

Westland resources, LLC will install an automatic gate opener at the main gate for winter operations. This will be a donation to the City of Trinidad. Estimated cost \$3500 .

City of Trinidad is in the process of re allocating replacing 2 vegas in the Miramonte banquet Room.

MONUMENT LAKE PARK LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made and entered into this 4th day of March, 2008 (the "Effective Date") by and between the CITY OF TRINIDAD, COLORADO, a Municipal Corporation (hereinafter referred to as the "City" or "Lessor"), located in the County of Las Animas, State of Colorado, and WESTLAND RESOURCES, LLC (hereinafter referred to as the "Lessee") a Colorado limited liability company.

RECITALS:

WHEREAS, the City is the owner of Monument Lake Park (the "Park"), including the facilities and improvements to the lands described herein below; and

WHEREAS, the City and the Lessee desire to enter into a lease insofar as it covers the lands, structures, fixtures, and improvements described below, upon and subject to the below terms, provisions, covenants, and agreements; and

WHEREAS, the City awarded this Lease pursuant to a competitive request for proposal process and both the City and the Lessee are aware of the risks associated with a long-term lease. The City awarded this Lease to Lessee based on representations made by Lessee that it would perform the improvements set forth in this Lease; and

WHEREAS, the Lessee understands that it is an indispensable condition of this Lease that it fund the improvements and perform its obligations as represented to the Trinidad City Council ("City Council") through documents submitted to the City and as reflected in meeting minutes of the City Council; and

NOW, THEREFORE, for and in consideration of the Lessee's refurbishment and construction of the facilities located in the Park as set forth in the documents submitted to the City Council, and the covenants and agreements herein to be kept by the Lessee, the City does hereby lease, let and demise unto the Lessee, its successors and assigns, as provided in this Lease, the following described lands, for the purposes stated herein and subject to the limitations set forth below:

1. DESCRIPTION OF THE LEASED PREMISES.

The West ½ of the West ½ and also that part of the South East Quarter (SE ¼) of the South West Quarter (SW ¼) south of the Maxwell Grant Boundary line, all in Section 31, Township 32 South, Range 68 West of the 6th P.M., comprising approximately 196 acres;

Also, a tract of land located East of the East Right of Way of Colorado State Highway No. 12, in the East ½ of the East ½ of Section 36, Township 32 South, Range 69 West, of the 6th P.M., comprising approximately 72 acres;

Also, a tract of land located East of the East Right of Way of Colorado State Highway No. 12, in the North East Quarter (NE ¼) of the North East Quarter (NE ¼) of Section 1, Township 33 South, Range 69 West, of the 6th P.M., comprising approximately 10 acres;

Also, a tract of land located in the North ½ of the North West Quarter (NW ¼) of Section 6, Township 33 South, Range 68 West, of the 6th P.M., comprising approximately 82 acres.;

The above described lands comprise a total of approximately 360 acres, all East of State Highway No. 12, hereinafter referred to as the "**Leased Premises**".

A map of the Leased Premises is attached hereto and made a part hereof as Attachment "A".

2. **CITY RESERVATIONS.**

Together with all appurtenances thereto and all other attractions, picnic area and ground improvements, and all improvements, structures, buildings, fixtures, furnishings, equipment, machinery and facilities now or hereafter on the Leased Premises, and together with all rights, titles and interests of the City, subject, however, to the easements and rights of way of telephone and rural electric companies, adjoining property residents, and subject to the City's reservation of water rights and water pipeline rights-of-way therefore, and all improvements, fixtures, equipment, and machinery appurtenant thereto, known as its water system, insofar as same are located within the above-described lands, and reserving unto the City its rights of ingress and egress into, over and across the Leased Premises for any purpose and all times, said property known as MONUMENT LAKE PARK.

3. **DESCRIPTION OF FACILITY.**

The City, in leasing the Leased Premises to Lessee, does hereby make available all improvements currently located within or upon the Leased Premises, including but not limited to the following: structures, buildings, fixtures, furnishings, equipment, machinery, and facilities located within or upon the Leased Premises as well as the following:

KENDELL HOUSE CAFE - designed for seating capacity of approximately seventy (70) persons including all kitchen facilities and equipment, utensils, dishes, etc.;

MIRAMONTE LODGE - including main room, registration desk area, lounge, penthouse manager's office, lower level storage area, and retail sales space;

TWENTY-UNIT MOTEL COMPLEX - motel complex (comprised of two (2) structures containing eight and twelve units, respectively) of varying room dimensions, each unit constructed with wood burning fireplace, exposed wood beam ceiling, ten (10) upper level units provided with sitting balcony, and ten (10) lower level units provided with sitting patio;

THIRTEEN DETACHED CABINS - detached cabins, (ten (10) single units and three (3) double units) each unit provided with wood burning fireplace, exposed wood beam ceiling, full plumbing and sitting patio;

FULL-SERVICE HOOK-UP SITES - each provided with electrical hook-up, sewage disposal hook-up and potable water service;

PARTIAL HOOK-UP SITES – thirty (30) sites provided with electrical hook-up and potable water service;

TENT CAMP SITES - each with designated off-road parking area;

BOAT RENTAL/STORAGE STATION - located at the south end of the lake, with capacity for boat storage;

RESTROOM - providing restroom facilities for day users;

FISH CLEANING STATION - a sanitary facility for the cleaning of fish by anglers;

CAMPER COMFORT STATION - containing men's and women's restroom and shower facilities and laundry facilities;

STORAGE - Lessee shall have use of all storage and out buildings. No livestock shall be allowed in such buildings;

DUPLEX STRUCTURE - with caretaker living quarters and lower level storage of equipment, tools, etc.; and

FISH HATCHERY- Lessee's operation of the fish hatchery will be subject to the terms of this Lease.

The foregoing represents, but is not inclusive of all such improvements, structures, buildings, fixtures, furnishings, equipment, machinery, and facilities herein leased.

4. LEASE TERM.

The term of the Lease shall be March 4, 2008 through March 4, 2018. The term of the Lease shall automatically be extended for two consecutive additional five (5) year periods from March 4, 2018, to and until March 4, 2023 and then until March 4, 2028 (collectively the "Lease Term"). Either party may terminate this Lease by providing written notice to the other of the intent not to extend the Lease. Such termination notice shall be actually served at least ninety (90) days prior to the expiration of the Lease Term. If such notice is not served in a timely fashion, the Lease shall automatically be extended in accordance with this Section 4. Following the expiration of the second five year term in 2028, the Lease shall run year to year until terminated pursuant to the terms of this Lease.

5. PLAN OF OPERATION.

The Lessee shall be required to submit to the City Manager an Annual Plan of Operation by February 1st of each year of the Lease Term which shall include identification of the means and manner in which each of the facilities comprising the Leased Premises will be operated and a description of services to be made available to the patrons of the park facility, during such year, which shall be the basis of the Lessee's operations that year, and shall be binding on the Lessee during such year. Should the Lessee elect to offer other services, amenities or attractions during

the year, which were not previously identified and described in a Plan of Operation, the Lessee shall submit an Amended Plan of Operation to the City Manager.

The Plan of Operation shall include at a minimum the following:

A. A Plan of Operation for the Leased Premises and all facilities therein, including methods of operation, services to be offered, and equipment and items to be purchased. Lessee shall maintain a detailed inventory of all of the items purchased for the operation of the Park that are not otherwise excluded as Lessee's personal property, and shall provide a copy of the inventory with its Plan of Operation so that the City may itemize and add such items to the City's inventory. The Plan of Operation shall be accompanied by a financial operating statement and budget which shall be kept strictly confidential, and not disclosed to the public.

B. A Plan for Security and Protection for all park facilities and identified methodology for responding to patrons' complaints and disputes;

C. Plan of Improvements identifying repairs and improvements to and restoration of existing Park structures and facilities. This shall also include the construction of new facilities or structures, or the modification, rebuilding, replacement, relocation or removal of any building or structure. (For these purposes, private residences placed within the Park by the Lessee shall not constitute improvements and must be approved by City Council). Lessee shall submit a detailed budget of expenditures for the plan of improvements that delineate the items purchased and expenditures made by Lessee and the capital improvement projects that will be funded by the City;

D. A Plan of Safety Response including the distribution of safety information, signage and protocol for rescue and medical help that may be required by employees or Park patrons.

If all or part of the Plan of Operation is identical to the previous year's Plan of Operation, the Lessee shall not be required to restate the identical part of the Plan of Operation, but may indicate those parts of the Plan of Operation that are unchanged, while indicating any changes from the previous Plan of Operation.

Upon receipt of the Plan or Amended Plan of Operation, the City Manager shall submit the Plan to the City Council and the City Council shall have thirty (30) days to advise the Lessee as to whether the City accepts, accepts with modifications or rejects the Plan or Amended Plan of Operation. The City's response to the submitted Plan or Amended Plan of Operation shall be in writing. If the Plan or Amended Plan of Operation is rejected in whole or in part, such response shall include the reasons for the rejection. Any provision of the Plan or Amended Plan of Operation which is inconsistent with the provisions of this Lease or is otherwise not in harmony with the historic uses, or the existing buildings, surroundings or terrain of the Leased Property, may be rejected. Failure on the part of the City Manager to respond in writing within the thirty-day period to the Plan or Amended Plan of Operation, shall constitute acceptance of the Plan or Amended Plan of Operation.

Until the submission of the initial Plan of Operation, the Lessee shall be bound by the following statements concerning Park operations contained in its proposal letter dated January

12, 2007 and April 11, 2007 and subsequently amended through the Request for Proposals process and the Operations Summary 2008 submitted on or about January 24, 2008.

6. RESERVED PROPERTY/STOCKING OF LAKE BY DIVISION OF WILDLIFE.

The stocking of fish in Monument Lake is dependent upon the Colorado Division of Wildlife, therefore, the Lessee shall not have exclusive possession of that part of the Leased Premises situated adjacent to the northwest entrance/exit gates. The area identified on Attachment "B" and labeled as "DAY USE PARKING AREA," shall be set aside for vehicle parking for walk-in anglers who may fish the waters of Monument Lake (the "Lake"). At all times, residents of Las Animas County shall be afforded unrestricted vehicle access to the lake for fishing purposes; provided, however that all residents of Las Animas County shall also be subject to the entrance fees as set forth in Section 8 of this Lease. The Colorado Division of Wildlife ("CDOW") shall have access into and through the Park for purposes of enforcement of State fishing regulations and the periodic stocking, monitoring, or if the City Council approves, the killing off of fish in the lake and in response to threats to public safety from wildlife. The Lessee acknowledges that the killing off of the fish in the Lake is necessary for the long-term ecological recreational health of the Lake and Lessee shall not obtain any financial relief, in any form from the City or the CDOW, as a result of the planned killing of fish in the Lake in 2008 or any future kill off of fish in the Lake.

7. REPAIRS/WAIVER OF LEASE PAYMENTS/ESCROW FUND.

A. The annual Lease payments are Thirty Thousand Dollars (\$30,000) per year with the below capital contribution costs credited toward the lease payments. The Lessee also commits an additional one percent (1%) of gross sales above \$1,000,000 for capital contributions as set forth below. The City shall have the right, not more than once per calendar year, to request and obtain an audit of the Lessee's accounts directly related to this Lease in order to determine whether its financial obligations are being met and whether the capital contributions have been committed by the Lessee. The City reserves the right to request, not more than once per calendar year, documentation evidencing the source of funds, whether by loan document or letter, that are used by Lessee to meet its obligations under this Lease.

B. The Lessee agrees to repair and restore existing Park facilities in return for the City's waiver of the right to receive periodic lease payments. The Lessee will make capital contributions into an escrow account. The escrow account documents shall be submitted to the City prior to the execution of this Lease and shall be incorporated herein by reference. The Lessee will contribute Fifty Thousand Dollars (\$50,000) per year commencing on the Effective Date of this Lease and then on or before the anniversary date for the years of 2009, 2010, and 2011. The payments out of this escrow account shall be for renovation, repair, new construction, restaurant equipment, recreational equipment, furniture, and similar items. The City shall receive copies of all receipts of the expenditures paid through the escrow account for approval by the City. Approval by the City shall be based on the benefit to the Park and consistency with the Lessee's Plan of Operation. The Lessee may expend more than the budgeted Fifty Thousand Dollar (\$50,000) contribution and receive a credit against future annual lease payments in subsequent years. If the Lessee does not fully expend the Fifty Thousand Dollars (\$50,000) in a

budgeted year, any remainder shall be rolled into subsequent years. All items purchased out of Lease payments by the Lessee for the operation of the Park shall become the property of the City in accordance with the Plan(s) of Operations submitted by Lessee to the City annually during the Lease Term.

8. PARK ENTRANCE FEE.

Lessee shall have the right to charge a park entrance fee set solely at its discretion. However, the Lessee shall not charge a park entrance fee of more than \$5.50 per vehicle per day visit and a \$27.50 annual pass per vehicle. Fifty cents (\$.50) per day pass and two dollars and fifty cents (\$2.50) per annual pass (collectively referred to as "**Conservation Fee**") shall be designated by the Lessee to be reinvested in Monument Lake Park for rehabilitation and conservation projects. The conservation fee shall be placed in the Lessee's escrow account and shall be used for rehabilitation and conservation projects. The conservation fee shall not be counted as part of the Lessee's contribution as set forth in Section 7.

9. CITY'S CAPITAL CONTRIBUTIONS.

As is budgeted in the City's 2008 budget, the City commits to match the capital contributions of the Lessee for the first four years of the Lease. The City will reimburse the Lessee for capital improvements that conform with the fiscal requirements of the City's Capital Improvement Fund. Because of its legal obligations, the City reserves the right to deny any payment that does not conform to the voter approved Capital Improvement Fund. As soon as is practicable, the City shall have an engineer's report on the current state of the drainage at the motel complex located on the Leased Property. The City shall be solely responsible for ameliorating any drainage issues that exist at the motel complex in a commercially reasonable manner.

10. NO COMMINGLING OF FUNDS.

The funds referenced in Sections 7, 8, and 9 above shall not be commingled nor be advanced into or from any of the accounts set forth for the designated purposes. The parties agree that any expenditure must be advanced by the Lessee subject to reimbursement.

11. MANAGEMENT RIGHTS.

Except as otherwise set forth by the terms of this Lease, from and after the Effective Date hereof, the fees charged for all attractions, facilities, goods and services shall be in the sole discretion of the Lessee.

12. RELATIONSHIP OF THE PARTIES.

The parties agree that they are each independent entities operating pursuant to the terms and conditions of this Lease. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Lease. The Lessee shall state on any advertising or web site that the Park is operated by Westland Resources, LLC.

13. MAINTENANCE OF PARK FACILITIES.

The Lessee shall maintain all roads, parking areas, trails, buildings, structures and improvements located within the Leased Premises in a good state of repair and in good operating condition at all times. Arterial routes of ingress and egress, roads and trails within the Park to and from the Leased Premises shall be maintained and repaired by the Lessee at a level of quality and quantity sufficient to adequately provide access to and from the Leased Premises at all times.

The Lessee shall not engage in or permit any action or activities which shall cause any damage to or destroy the natural environment of the Leased Premises, including permanent damage to or destruction of natural vegetation, soil erosion or contamination of the City's water supply.

The Lessee shall not cause, permit or maintain the accumulation of any junk or refuse, including, but not limited to old rope, old iron, brass, copper, tin, lead, old lumber, construction material or debris, bricks, building remnants, rags, empty bottles, broken glass, paper, or bagging. The Lessee shall be permitted to store usable materials, provided they are kept in a presentable and sanitary condition, and do not become unsightly or an eyesore.

The Lessee shall be solely responsible for the provision of all labor, supplies and equipment necessary for the operation of the Leased Premises' facilities and services, in accordance with the Plan of Operation.

The Lessee shall also be responsible for all costs incurred in the operation of the Leased Premises, facilities and services, including employee wages and required associated taxes in its capacity as employer.

The Lessee shall satisfy all local, state, and federal laws and regulations applicable to the type and nature of business activities to be operated or maintained within and upon the Leased Premises.

The Lessee shall provide for any and all discharge permits required by the Colorado Department of Public Health and Environment that may be necessary due to the operation of the Fish Hatchery.

If it is deemed legally necessary, the Lessee and/or assignee shall pay any and all legal fees and/or purchase any augmentation water that is required to operate the Fish Hatchery.

14. COMPLIANCE WITH APPLICABLE LAWS.

The Lessee and his employees and agents shall at all times materially comply with all applicable laws, statutes, rules and regulations of the United States, the State of Colorado and Las Animas County in its operation of the Leased Premises, and shall not permit any disorderly conduct, excessive noise or nuisance on the Leased Premises. In the event that Lessee fails to materially comply with any applicable laws, statutes, rules or regulations, Lessee shall have thirty (30) days in which to cure such non compliance with any such applicable law, statute, rule or regulation; or if compliance is not possible with such thirty (30) day period of time, Lessee

shall provide reasonable evidence to the City that Lessee has commenced to cure such non-compliance as soon as commercially reasonable.

15. OWNER RIGHT TO INSPECT PREMISES.

The duly authorized agents and representatives of the City shall have the right to enter upon the Leased Premises at any reasonable time for the purpose of inspecting any portion of the Leased Premises or any improvement, structure, facility and attraction thereon, except private residence(s) placed and maintained by the Lessee. Any and all construction performed on the Park facilities will be inspected by the City's Building Inspector's Office.

16. UTILITIES.

The City agrees to provide the following described utility services:

A. The City agrees to deliver potable water from the City's water system to the Lessee for all of the Lessee's normal and reasonable requirements on the Leased Premises and to provide for treatment of wastewater at its wastewater treatment plant, both without charge to the Lessee, except as set forth herein. The Lessee shall be responsible for the maintenance, repair and general upkeep of the plumbing systems within all structures and facilities and service lines extending from the same to the point of potable water shut off valve and sewer service line clean out. The City shall be responsible for the maintenance, repair and general upkeep of the potable water and sewer collection system. If the operation of the sewer or water treatment plant fails due to mechanical or regulatory issues, the Lessee shall immediately contact the City's Utility Superintendent. If the repair requires the property to close for a period of thirty (30) days or more sporadically or consecutively, the parties shall negotiate to extend the lease for the length of time commensurate with the time the park was closed. The parties also have the option to mutually agree to terminate the lease on the basis of excessive closures. These options constitute the only remedies available to the parties.

B. The City may also from time to time restrict the discharge of waste into the sewage dump station to avoid a malfunction of its wastewater treatment plant, provided it has furnished reasonable advance notice of its intent to do so to the Lessee. It is acknowledged that portions of the potable water delivery system are subject to frost damage during winter months thereby necessitating the shut off and draining of such line segments to avoid such damage. Lessee shall be responsible for any damage caused by the failure to shut off and drain such line at the end of the season.

C. The electrical power delivery system is acknowledged to be owned by San Isabel Electric Association, Inc., consisting of primary distribution lines and equipment to the point of service metering at the main service panel for each structure. No charges shall be levied against the Lessee by the City for utility services of water or wastewater disposal, however, the Lessee shall be responsible for all electrical service charges incurred in the operation of the facilities herein leased as levied by San Isabel Electric Association, Inc.

D. The Lessee shall determine the type and level of telephone service deemed necessary for the operations of the park facilities and shall be solely responsible for all service charges levied by the telephone service supplier.

17. LIQUOR LICENSE.

The Lessee shall not, without prior approval of Las Animas County and the State of Colorado, permit the sale of alcoholic beverages as defined in Title 12, Article 46, 47 of the Colorado Revised Statutes, upon the Leased Premises. Should the Lessee obtain such license or permit for the sale of alcoholic beverages, the Lessee agrees to surrender all rights afforded by such license or permit upon the expiration of the term or extended term of this Lease. The Lessee shall maintain dram shop liability insurance for all licensed premises.

18. LESSEE CONTROL OF FACILITIES.

The City hereby agrees that the Lessee, shall have the peaceful possession and quiet enjoyment of the Leased Premises, except as limited under the provision of "RESERVED PROPERTY" in Section 8 above or any other limitations reserved to the City under this Lease, for and during the Lease Term, including any extension of the Lease Term. Lessee shall not have any right to subdivide the property. The Lessee shall not develop any part of the property without the express written consent of City Council.

19. RIGHT TO SUBLET TO OTHER ENTITIES.

The Lessee shall not have the right to sublet or assign this Lease in its entirety. Lessee shall have the right to sublet any concession or activity to another legal entity (corporation, partnership, individual, foundation, etc.) provided that the Lessee either maintains a controlling interest as a sublessor or executes a sublease with the prior written consent from City Council. If any change occurs in the ownership of Westland Resources, LLC, the City shall be notified of such ownership change.

20. GRANT OPPORTUNITIES.

Lessee may request that the City support any grant application made by or on behalf of the Lessee to improve facilities or activities at the Park. The City reserves the right to withhold such support based on grant cycles and other grant priorities that the City may have at the time. Lessee and/or any third party acting on its behalf agrees not to submit any grant application that would compete with a City grant application.

21. INDEMNIFICATION AND INSURANCE.

The Lessee agrees to indemnify, protect and save harmless the City against all claims and indebtedness of every nature in any way connected with Lessee's operation of the Leased Premises, including but not limited to all payrolls, taxes, amounts due contractors and subcontractors, accounts for labor performed and materials furnished, incidental services, liens and judgments.

The Lessee further agrees to indemnify, protect, and save harmless the City against loss or damage occasioned by the maintenance or operations of the Park or any other improvements constructed, maintained or operated on said premises by the Lessee or any sublessee and shall defend at his own expense, any and all suits that shall be instituted against the City, because of, or occasioned by the maintenance or operations of any said properties, improvements by or

under the Lessee and his sublessees; and shall pay off and satisfy any and all judgments that may be imposed by reason thereof. However, Lessee shall not indemnify the City for any claims that arose prior to the Effective Date of this Lease nor for any claims attributable to the active negligence or intentional act of the City or its employees unless covered by insurance that Lessee is required to provide.

Prior to the effective date of the lease, the Lessee shall be required to obtain and to maintain at all times thereafter during the Lease Term, liability insurance coverage naming the City as additionally insured. The lease of the City property, the subject of this Lease, shall not become effective unless and until the Lessee has tendered to the City an acceptable Certificate of Insurance reflecting coverage in the following amounts:

\$1,000, 000.00 each occurrence
\$2,000,000.00 aggregate

The City shall cause the Leased Premises and all buildings, structures and improvements on the Leased Premises as well as the City-owned contents contained in such buildings, structures and improvements, to be covered under the City's property and casualty insurance policy, with the Lessee to be named as an additional insured. It shall however be the responsibility of Lessee to insure the personal property Lessee owns and has placed on the Leased Premises in such amounts and subject to such terms as Lessee deems appropriate.

In case of loss or damage to property covered by the City's insurance, it is the intent of the parties hereto to replace or restore all such buildings, structures and improvements or any of them damaged or destroyed to substantially the condition in which the same existed prior to the casualty. The City hereby commits the insurance proceeds to that purpose. In the event, however, that such insurance proceeds are insufficient to cover 100% of the cost of replacement or restoration of the damaged or destroyed structures or improvements, neither the City nor the Lessee shall be required to expend of their own funds for replacement or restoration of said structures or improvements. Either party, at its option, may elect to have such structures or improvements, damaged or destroyed by casualty, restored or replaced, where the insurance proceeds are insufficient to cover the full cost of replacement or restoration, by paying out of its own funds all replacement or restoration costs in excess of the amount of the insurance proceeds. Nothing in this Lease shall preclude the parties from reaching a mutual agreement to share the costs of replacement or restoration. In the event that the insurance proceeds are insufficient to cover the full cost of replacement or restoration, and neither party is willing to pay the additional costs of replacement or restoration, either in full, or by mutual agreement, in part, those structures or improvements damaged or destroyed, shall not be replaced or restored. In that event that the insurance proceeds are insufficient to cover the full cost of replacement or restoration, and neither party is willing to pay the additional costs of replacement or restoration, either in full, or by mutual agreement, in part, those structures or improvements damaged or destroyed, shall not be replaced or restored. In that event, the insurance proceeds received by the City, shall be first applied to demolition and clean up of the damaged or destroyed structures or improvements, with the balance to be committed by the City to investment in some other real property improvement within the Park. The Lessee may propose in conjunction with its annual plan of operation one or more capital projects for the use of such insurance proceeds. The

provisions of the Plan of Operation shall govern as to the procedure for obtaining City approval for such capital projects.

If the City's insurance proceeds are sufficient to cover the full cost of replacement or restoration, the parties by mutual agreement may elect not to replace or restore the damaged or destroyed structures or improvements and have such proceeds committed to some other real property improvement within the Park.

Nothing in this Lease shall be construed as a waiver of the City's governmental immunity as provided under Colorado law.

22. **ARBITRATION.**

The parties hereto agree that any dispute between them on any matter concerning the performance by the Lessee of any provision of this Lease to be kept or performed by it, which the City elects not to treat as a breach requiring termination of the Lease, or any dispute concerning an interpretation of any of the provisions of this Lease, shall be submitted to a board of arbitrators consisting of three (3) persons, all of whom shall be appointed, one each by the City and the Lessee and the third by mutual agreement of both parties. In the event that the two parties are unable to agree on the selection of a third arbitrator within sixty (60) days, said third arbitrator shall be appointed by the District Judge of Las Animas County. A written decision of a majority of the board of arbitrators shall be binding on the parties hereto. The board of arbitrators shall have such authority and its decision shall have the force and effect as now provided by Rule 109, Colorado Rules of Civil Procedure.

23. **TERMINATION.**

Should either party violate any of the terms and conditions of this Lease, the other may treat such violation as a breach of this Lease and may terminate the Lease by giving at least thirty (30) days written notice of intent to terminate the Lease following which the Lessee shall have fifteen (15) days within which to cure any default. In the event of a default by the Lessee in carrying out a decision rendered by the board of arbitrators, the City may terminate the Lease by giving at least thirty (30) days written notice of intent to terminate the Lease. Because the parties recognize the risks associated with a ten (10) year lease and because the lease was awarded through a Request for Proposal process ("RFP"), neither party shall claim any loss of funds dedicated under this Lease due to an invalid early termination of this Lease. The parties recognize that but for the competitive RFP, each could have pursued other opportunities, but each party chose to enter into this Lease with all of the attendant risks.

If at any time the Lease Term of this Lease shall be ended as aforesaid or in any other way, the Lessee covenants and agrees to surrender and deliver up the Leased Premises peaceably to the City upon termination of said Lease Term. If the Lessee shall remain in possession of the same after the termination thereof, the Lessee shall be deemed guilty of an unlawful detainer of said premises under Section 13-40-101 et seq. of the Colorado Revised Statutes and shall be subject to eviction and removal.

Upon the termination of this Lease or any extension thereof, all the property, improvements and furnishings provided by the City and improvements erected and/or placed on

the Leased Premises by the Lessee or the City, and all other attractions, complete with all operating properties, picnic areas, and ground improvements, if and to the extent that same are then in existence and located on the Leased Premises, shall vest in and remain the property of the City, except for structures placed by the Lessee and used as personal residence(s). The City shall have the right to copies of all registration records of patronage of the Park facilities; however, all personal property of the Lessee not purchased as part of the City-owned inventory as set forth in Section 5(A) of this Lease, shall remain the property of the Lessee and shall be removed or disposed of by the Lessee within sixty (60) days of such termination of this Lease. If not removed within sixty (60) days, such property will become the property of the City. Further, upon such termination, the Lessee, upon request of the City, shall assign and set over unto the City, all leases, rights of way, easements or permits acquired by the Lessee for purposes of locating and operating any of its facilities on the Leased Premises, provided that the City shall assume all executory duties and obligations thereunder.

24. OFFICIAL NOTIFICATION.

All notices expressly required or permitted to be given by either party hereto to the other shall be reduced to writing and either mailed by registered or certified mail, return receipt requested, postage prepaid, or delivered, addressed as follows:

- (a) If to the City:
City Clerk
City of Trinidad
135 North Animas Street
P.O. Box 880
Trinidad, CO 81082

- (b) If to the Lessee:
Michael V. Robb
Westland Resources, LLC
1626 Hayes
Trinidad, CO 81082

Said addresses may be changed by giving like notice as aforesaid.

25. FORCE MAJEURE.

Any loss or damage due to or delay in or failure of performance of either party hereto shall not constitute a default hereunder to give rise to any claim for damages, if and to the extent, that such loss or damage or delay or failure is caused to an occurrence beyond the reasonable control of the party affected, including but not limited to, acts of God or the public enemy, expropriation or confiscation of facilities, or compliance with any order, law, rule or regulation of any governmental authority, or acts of war, rebellion, insurrection or sabotage, or any other cause or event, whether or not of the same class or kind as those specifically above named, not within the reasonable control of the party affected, or any other cause or event, beyond the control of either party, which shall have materially impaired, limited, or restricted the general public's use of or access to the Leased Premises.

[Any party asserting Force Majeure as an excuse to performance shall have the burden of proving proximate cause, that reasonable steps were taken to minimize the delay and/or damages caused by events when known, and that the other party was timely notified of the likelihood or actual occurrence which is claimed as grounds for a defense under this clause.

26. INVALIDITY AND COURT JURISDICTION.

In the event any term or provision hereof shall ever be declared or determined to be void, invalid, or unenforceable, such fact shall not affect in any manner the validity or enforceability of the other terms and provisions hereof. This contract shall be deemed to have been executed in the City of Trinidad, County of Las Animas, State of Colorado and the parties hereto agree that the District Court in and for the County of Las Animas, State of Colorado shall have jurisdiction in any suit or proceeding to determine any of the rights, duties, and obligations of the parties hereto and venue shall be proper in the said Court.

27. LESSEE RIGHTS AND RESPONSIBILITIES..

By assignment approved by the City, the Lessee is vested with and is the present owner and holder of all rights, titles, interest, benefits, and privileges of Lessee under this Lease and is subject to all of the responsibilities, duties and obligations reposed in and upon the Lessee under this Lease. Upon the Effective Date, the terms of this Lease shall constitute and embody the sole and exclusive contract between the parties hereto; and it is understood and agreed that the Lessee shall not be liable for additional lease payments or other obligations under the Lease.

28. AGREEMENT AUTHORITY.

This Lease shall be binding upon and inure to the benefit of the parties hereto pursuant to the terms set forth in Section 19 of this Lease.

29. EXTENT OF AGREEMENT.

This Lease contains all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Lease. No changes or modifications of this Lease shall be valid or binding upon either party to this Lease unless such changes or modifications are in writing and executed by both parties.

30. FORM OF EXECUTION.

This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original instrument, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

