



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE July 18, 2019

TO Members of the Joint Travel, Recreation, Wildlife & Cultural Resources Committee

FROM John Brodie, Staff Attorney

SUBJECT Hot Springs State Park contract materials provided by the Department of State Parks and Cultural Resources regarding the Best Western Plus Plaza and Days Inn by Wyndham Thermopolis

The purpose of this memorandum is to provide a summary of the contract materials provided to the Committee by the Department of State Parks and Cultural Resources ("Department") related to the above-referenced hotels located in Hot Springs State Park. In response to a request by the Committee, the Department provided all contract documentation in its possession related to these two businesses. This memorandum provides a brief description the document sets provided to the Committee, beginning with the Best Western Plus Plaza located at 116 East Park Street in Thermopolis, and then shifting to the Days Inn by Wyndham Thermopolis located at 115 East Park Street, Thermopolis. It will also identify what documents appear to be missing relevant to each document set.

I. Best Western Plus Plaza:

In response to the Committee's request, the Department provided four sets of documents. For clarity, these documents will be referred to as: a) *Wyoming Resorts—All agreements*; b) *Plaza History Transfer*; c) *Assignment to Sona, LLC*; and, d) *2015 Facility Assessment*. Each document will be addressed in turn.

a. Wyoming Resorts—All agreements

This document set consists of thirty-one pages. It begins with a copy of the current lease of the Best Western property by the State of Wyoming to Wyoming Resorts, LLC (Wyoming Resorts), executed in 1998. It also includes five amendments to the lease agreement. The State had previously leased the property to a W.H. Callaghan, whose lease expired or was terminated, and the State then entered into a new agreement with Wyoming Resorts. The Department did not provide a copy of the W.H. Callaghan lease agreement.

The new lease agreement became effective January 1, 1998 for a lease-term of 30 years. Of note, the lease required Wyoming Resorts to submit a master plan to the State within one year of the January 1, 1998 effective date. The purpose of the master plan was "to define management of the concession for current and future periods and to provide for planned improvements and/or expansion to the buildings, grounds or

structures." This master plan was required to be in accord with the Hot Springs State Park Master Plan. The Department did not provide a copy of the Wyoming Resorts master plan required within this one-year period, though the Department did provide a master plan submitted by Best Western in 2013.

Since first being executed in 1998, the Wyoming Resorts lease agreement has been amended five times—once in 1998, once in 1999, twice in 2003 and once in 2008. The 1998 amendment modified Wyoming Resorts' assumption of a mortgage previously filed against the property by a prior operator. It also included seven additional provisions to the "Special Provision" section of the Wyoming Resorts lease agreement. These provisions inure partly to the benefit of the mortgage holder, Big Horn Basin Federal Savings and Loan, clarify that the Wyoming Resorts lease agreement is a land lease and that Wyoming Resorts owns the buildings and improvements situated upon the leased land, though it recognizes that historic buildings and improvements may not be removed or destroyed.

The 1999 amendment reflected that Wyoming Resorts had changed its mortgage lender from Big Horn Basin Federal Savings and Loan to Goleta National Bank. Thus, through the amendment all rights previously held by Big Horn Basin Federal Savings were transferred to Goleta National Bank.

The first 2003 amendment clarified payment dates, stating the lease year runs from January 1 to December 31 of each year and that the annual lease fee is to be paid no later than March 31 of each lease year. The second 2003 amendment modified the annual lease fee to be an average of the previous five years.

The 2008 amendment extended the lease term of the Wyoming Resorts lease agreement. The lease agreement was due to terminate on December 31, 2028. The 2008 amendment extended the lease term to the year 2043. This amendment further authorized Wyoming Resorts to construct and operate an additional twenty-four guestrooms.

b. *Plaza History Transfer*

This document set consists of nine pages that detail the transfer history of the Best Western property from 1953 to 1964. The assignment in 1953 further evidences that the State of Wyoming executed a lease of the property in 1917 to a W.H. Callaghan of Thermopolis. As stated above, the Department did not provide a copy of the original lease document, but the assignment from 1953 indicates a copy of the lease may be found at the office of the County Clerk of Hot Springs County.

Generally, the *Plaza History Transfer* document set indicates that the State of Wyoming originally leased the Best Western property to a W.H. Callaghan in 1917. Thirty-six years later, a Martha O. Healy assigned her interest in the property to an Eddie E. Nordquist and Wanda Lee Nordquist in 1953. The Department did not provide any documentation indicating how W.H. Callaghan's interest in the property was ultimately transferred to Martha O. Healy.

After the assignment of interest to Eddie and Wanda Nordquist, in 1959 the Nordquists assigned their interest to the Hausauer family (Jack, Amelia, Edward, Vera and John). That same year, the Hausauer family assigned their lease interest to Plaza Hotel and Apartments, Inc. (of which Jack Hausauer was President). Thereafter, in 1964 Plaza Hotel and Apartments, Inc., assigned its lease interest in the property to Big Horn Basin Federal Savings and Loan Association, of Greybull, Wyoming as security for a financial loan.

c. *Assignment to Sona, LLC*

This document consists of nine pages and assigns and transfers the Wyoming Resorts lease agreement, and all amendments thereto, from Wyoming Resorts, LLC, to Sona, LLC. The parties executed the assignment in July 2018. The assignment document refers to an assignment of lease dated June 27, 2017, a copy of which the Department did not provide to the Committee.

d. *2015 Facility Assessment*

This document consists of a 104-page report and is dated November 1, 2015. The document represents a comprehensive observation, document review and report of the current building conditions of the Best Western Plus Plaza. Plan One/Architects prepared the report, which contains multiple components: An Architectural Evaluation; a Structural Evaluation; a Mechanical, Electrical, and Plumbing (MEP) Evaluation; a Roof Evaluation; and a Food Services Evaluation. Plan One also conducted a Building Asbestos Survey and a Pool Assessment. The report further provides a cost estimate for addressing all issues raised. The facility assessment concluded as follows:

The facility has been maintained well. The renovation performed in 1999 upgraded many of the mechanical, plumbing and electrical systems to energy efficient modernized systems, all while retaining the historical character of the building. Some of the MEP systems are reaching their expected life as delineated in the detailed reports. Some ADA compliance issues are present, however, with the historical nature of the building, cannot be avoided. A significant equal facilitation issue is present with handicapped unable to access the second floor.

II. Days Inn by Wyndham Thermopolis

In response to the Committee's request, the Department provided thirteen document sets. These documents fall into five categories: a) *1970 Lease Agreement*; b) *2013 Master Plan*; c) *Inspection Reports*; d) *Waterline Easement Agreement*; e) *Department Correspondence*; f) *2011 Lease Renewal Assessment*; and g) *2015 Facility Assessment*. As above, each set of documents will be addressed in turn.

a. *1970 Lease Agreement*

This document consists of 27 pages. The State of Wyoming and Carter Spa & Inn, Inc. (Carter Spa & Inn) executed the lease agreement on August 17, 1970. The agreement indicates property previously leased to the Gottsche Foundation was assigned to Carter Spa and Inn. However, the Department did not provide a copy of the lease agreement between the State of Wyoming and the Gottsche Foundation or a copy of the lease assignment agreement between the Gottsche Foundation and Carter Spa and Inn.

The purpose of the 1970 lease agreement was for the construction and operation of a Holiday Inn upon the leased premises. The agreement provided for a 40-year lease term—which expired on October 17, 2011—and granted Carter Spa and Inn the exclusive right to renew the lease term for an additional 40-year term so long as it fully complied with the terms of the lease agreement. Based on the materials provided by the Department, it appears that Carter Spa & Inn sold their interest in the hotel to Big Springs Spa, Inc.,

which appears to own and operate the Days Inn. The Department did not provide documentation showing the assignment of the lease to Big Springs Spa, Inc. The State of Wyoming has not agreed to renew the 1970 Lease Agreement (*see 2011 Days Inn Facility Assessment* below). The Days Inn has operated under the terms of that agreement on a month to month basis since 2011.

b. *2013 Master Plan*

The 2013 Master Plan consists of nine pages and states it was prepared by the Days Inn at the request of the State of Wyoming to "assist in the long-range vision for the Days Inn" property and "define how it can complement Hot Springs State Park and the Town of Thermopolis while providing an adequate return to the owners of the facility."

The plan provides a description of the facility including its size, location, and operation and amenities. A description of the town of Thermopolis and of Hot Springs State Park is also included. Of note, the plan states that Big Springs Spa transitioned the hotel from Holiday Inn to a Days Inn in approximately 2009.

The plan further details concerns for operating the Days Inn including the availability of employees in the summer months and to a lesser degree, maintaining the infrastructure due to the mineral rich hot springs. The plan also lists nine areas for planned improvements at a total approximate cost of \$264,106.00, with these improvements being implemented over a three-year time period. Improvements include upgrades to guestrooms, banquet rooms, dining room and lounge areas, and improvements to the fire suppression system and heating and air conditioning system. The plan indicates that the Days Inn is also considering expanding the operation to include an addition to accommodate twenty more guestrooms, though no specific timeline was contemplated.

c. *Inspection Reports*

The inspection reports provided to the committee entail three reports issued by the Department for the years 2015, 2016, 2017 and an inspection report issued by the State Fire Marshal in 2017. The Department's inspection reports detail a rating of the Days Inn facility's overall appearance in multiple areas such as the inside and outside of the building, the kitchen, entryway and lobby, and dining area, and provides a ranking between 1 (Poor) and 5 (Excellent). Photographs of the areas evaluated are provided for reference.

The *2015 Inspection Report* consists of 46 pages and states the inspection took place on April 2, 2015. The report includes nine action items, four recommendations concerning areas of the facility, and details four areas where the Department found the facility not to be in compliance with the duties and obligations assigned through the lease agreement—failing to submit annual accounting relative to gross income received for the years 2012, 2013 and 2014, and failures to maintain the property in a first-class condition in specified areas.

The *2016 Inspection Report* consists of 30 pages and states the inspection took place on September 13, 2016. The report defined the scope of the inspection to include three general areas: Life Safety/Accessibility/Fire; Cleanliness and Condition; and, Visitor Satisfaction. The report included four action items: 1) monitoring the stucco siding on the outside of the building; 2) repairing and replacing damaged and uneven sidewalk segments and cement below areas of the stucco siding; 3) recommended replacement of outdated metal doors, including a more up-to-date motion sensor for the door; and 4) repairing and replacing damaged ceiling tiles and replacing the carpeting in the fitness areas. The report

also detailed multiple areas where the Days Inn was not in contractual compliance with the lease agreement, for example by failing to provide an annual account relative to gross income and failing to maintain the property in a first-class condition.

The *2017 Inspection Report* consists of 18 pages and states the inspection took place on July 25, 2017. The report again defined the scope of the inspection to include three general areas: Life Safety/Accessibility/Fire; Cleanliness and Condition; and, Visitor Satisfaction. The report included six action items: 1) continuing to monitor the stucco siding on the outside of the building; 2) continue repairing the building sidewalks as needed; 3) recommended replacement of outdated metal doors, including a more up-to-date motion sensor for the door; 4) continue updating and remodeling interior room bathrooms; 5) continue to upgrade furniture and fixtures in the bar/lounge area; and 6) continue replacing outdated equipment in the fitness areas. The report also detailed multiple areas where the Days Inn was not in contractual compliance with the lease agreement, for example by failing to provide an annual account relative to gross income and failing to utilize the premises as originally intended as a hotel, lounge, full service restaurant and spa. Of note, the report also noted the Days Inn should continue working on submitting a proposed master plan for review by the State.

The *2017 State Fire Marshal Inspection Report* consists of two pages and indicates the inspection took place on February 10, 2017. The report defines the scope and purpose of the inspection and identifies areas in violation of the fire code, while also noting areas where past violations have been corrected. Code violations related to necessary illumination of several fire exits signs, the need for multi-plug adapters to be circuit protected, and several smoke detectors being inoperable. The report noted corrections related to proper operation of doors for guestrooms, though several guestroom doors still needed to be addressed.

d. *Waterline Easement Agreement*

This document consists of three pages and represents an easement granted by Big Springs Spa to the State of Wyoming for the purpose installing a waterline. The parties entered into the easement agreement on September 26, 2005. The term-length of the agreement was to coincide with the 40-year term of the 1970 Lease Agreement.

e. *Department Correspondence*

The correspondence provided by the Department consists of four letters from the Department to the Days Inn regarding renewal of the 1970 lease agreement and a what appears to be a form letter sent to Hot Springs State Park lease holders providing guidance on concessionaire master plans. The Department sent the first of the four letters on October 6, 2011, indicating the Department had opted not to renew the 1970 lease agreement, which was set to expire on October 17, 2011. The letter further stated that the Department was working on a new lease agreement and hoped to have it available for review prior to the lease expiration date. In the meantime, the Department advised the Days Inn that the terms of its current lease were being maintained on a month to month basis "for up to two months."

On April 9, 2013, the Department sent a letter to unspecified concessionaires notifying these concessionaires of what the Department thought should be included as part of individual concessionaire master plans. The Department stated that these master plans are to have four components: an evaluation of the existing condition of the operation; a discussion of the issues concerning the operation; a discussion of

the concessionaire's vision of their operation over a span of ten or twenty years; and, and an explanation of how the operation intends to accomplish its ten- or twenty-year vision.

On May 19, 2014, the Department sent a letter to the Days Inn to schedule a meeting to discuss the long-term operation of the concessionaire's business with the state park. The letter indicated the Days Inn was continuing to operate on a month-to-month basis under the terms of the expired 1970 lease agreement and the need to discuss the available options for the parties.

On August 1, 2014, the Department sent a letter to the Days Inn. The letter refers to a meeting set for October 22, 2014 and states that during the meeting the parties can discuss a letter dated May 13, 2014 sent by the Days Inn to the Department. The Department did not provide a copy of this letter to the Committee. The letter also states that it included a copy of a February 7, 2013 letter stating the Department's continued position is that the renewal standards were not met and that the Days Inn continues to operate on a month-to-month basis under the terms of the expired 1970 lease agreement. The Department did not provide a copy of February 7, 2013 letter to the Committee.

f. 2011 Lease Renewal Assessment

This document consists of a 42-page report and is dated August 8, 2011. The Department engaged the services of CHM Government Services (CHM), a company that specializes in providing a vast array of advisory services to public sector clients responsible for hospitality and recreation assets. CHM advised the Department on whether the Days Inn had fully complied with the terms of the 1970 Lease Agreement in order to exercise its right to renew the lease for an additional 40-year term.

CHM conducted background research on the Days Inn and conducted a property assessment of the Days Inn facility. The assessment involved an examination of the condition of the building and surrounding grounds, including the roof, public spaces, guestrooms, back of house areas and a review of the building envelope, site, parking and area amenities. Photographs were also taken as part of the assessment.

Following the assessment, CHM provide the Department with its conclusions as to whether the Days Inn was in full compliance with the terms of the 1970 Lease Agreement. CHM concluded that overall, the Days Inn was not in compliance with the lease terms in keeping the property in "good order, repair and condition." Specifically, while CHM found the personal property within the public areas to be in compliance, it also found the guestrooms to only be in partial compliance and found the roof systems and HVAC units to not be in compliance. As a result, CHM concluded that the Days Inn was not eligible for a renewal of the lease.

g. 2015 Facility Assessment

This document consists of a 159-page report and is dated November 1, 2015. This document represents a comprehensive observation, document review and report of the current building conditions of the Best Western Plus Plaza. As was the case with the facility assessment of the Best Western, Plan One/Architects prepared the report, which contains multiple components: An Architectural Evaluation; a Structural Evaluation; a Mechanical, Electrical, and Plumbing (MEP) Evaluation; a Roof Evaluation; and a Food Services Evaluation. Plan One also conducted a Building Asbestos Survey and a Pool Assessment. The report further provides a cost estimate for addressing all issues raised. The facility assessment concluded as follows:

WYOMING LEGISLATIVE SERVICE OFFICE *Memorandum*

While the facility is in operational condition, it is in need of renovation. The building and the utilities serving the occupied spaces are showing their age. Many of the systems and equipment are reaching their life expectancy as delineated in the detailed reports. Some ADA compliance issues are present, however, with the historical nature of the building, cannot be avoided. A significant equal facilitation issue is present with handicapped unable to access the second floor. Regular maintenance and upgrades to the buildings appear to be sporadic. Lack of drawings and aging equipment evidence this fact.

File Storage: F:\AA\Committees\TRAVEL\2019 MATERIALS\July\Hot Springs Contracts_Committee request

WYOMING LEGISLATIVE SERVICE OFFICE *Memorandum*

LSO LEGAL • 200 W. 24TH STREET, ROOM 213 • CHEYENNE, WYOMING 82002
TELEPHONE (307)777-7881 • FAX (307)777-5466 • E-MAIL LSO@WYOLEG.GOV • WEB SITE WWW.WYOLEG.GOV