MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY, SOUTH DAKOTA GAME, FISH AND PARKS, AND SOUTH DAKOTA SPORTSMEN AGAINST HUNGER FOR THE DEER HARVEST

This Memorandum of Understanding (“MOU”) is made by and between: the CITY OF RAPID CITY, a municipal corporation, hereinafter referred to as the “City,” of 300 Sixth Street, Rapid City, SD 57701; SOUTH DAKOTA GAME, FISH AND PARKS, a department of the State of South Dakota, hereinafter referred to as “GFP,” of 523 East Capitol Ave., Pierre, SD 57501; SOUTH DAKOTA SPORTSMEN AGAINST HUNGER, a South Dakota nonprofit corporation, hereinafter referred to as “Sportsmen,” of 1301 West Omaha Street, Suite 228, Rapid City, SD 57701; and BLACK HILLS SPORTSMEN CLUB, INC., a South Dakota nonprofit corporation, hereinafter referred to as “Club,” of 1301 West Omaha Street, Suite 228, Rapid City, SD 57701, collectively referred to as “the Parties.”

WHEREAS, there are a large number of conflicts between deer and people in the City of Rapid City every year, including collisions between automobiles and deer, that have resulted in extensive property damage, habitat damage, bodily injury, and in some cases even death; and

WHEREAS, the City of Rapid City adopted a revised deer management plan in 2012 entitled the Rapid City Deer Management Program in an effort to foster healthy deer populations; and

WHEREAS, the mission of South Dakota Sportsmen Against Hunger is to encourage and facilitate donation of wild game meat to families in need of nutritious food in South Dakota; and

WHEREAS, part of the mission of the Black Hills Sportsmen Club, Inc. is to promote the conservation, sound management, and sustainable use of wildlife and wildlife habitat; and

WHEREAS, Chronic Wasting Disease, an always fatal neurological disease of cervids, has been found in the city limits of Rapid City and reducing deer densities has been indicated as one method that may limit the spread of the disease; and

WHEREAS, South Dakota Game, Fish and Parks desires to limit the spread of Chronic Wasting Disease and other diseases in the South Dakota deer population; and

WHEREAS, the City of Rapid City, South Dakota Game, Fish and Parks, Sportsmen Against Hunger, and the Black Hills Sportsmen Club, Inc. have worked cooperatively in past years to reduce the deer population and provide nutritious deer meat to families in need through Feeding South Dakota; and

WHEREAS, the Parties desire to reduce their mutual agreements to writing with this MOU.

NOW THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:
1. **Recitals.** The recitals set forth above constitute an integral part of this MOU and are incorporated herein by this reference as if fully set forth herein as agreements of the Parties.

2. **Purpose.** The purpose of this MOU is to set forth the terms and conditions under which the City, GFP, Sportsmen, and Club will work together to conduct a deer harvest in 2020 and to set forth the obligations of each party.

3. **Consideration.** The Parties agree that the mutual covenants and promises contained herein shall constitute good and sufficient consideration for the execution of this MOU.

4. **City Obligations.** The City will be responsible for the following and all costs associated with such:
   
   a. Harvesting of up to 250 deer. Costs for harvesting the deer include, but are not limited to, the cost of weapons, ammunition, bait, compensation for shooters, insurance for the harvesting, transportation costs, and administrative costs. The City will sever the heads of harvested deer from the bodies of the harvested deer and provide the heads to GFP at the GFP Outdoor Campus - West located at 4130 Adventure Trail in Rapid City. The City will transport harvested deer bodies to the location of the GFP cold storage unit located at 4130 Adventure Trail or a different location agreed upon by both GFP and the City; and
   
   b. Contracting with a processor for the processing of the harvested deer into ground deer meat; and
   
   c. Paying for the processing of up to 150 deer into ground deer meat, except for providing the plastic bags needed for the storage of the processed ground deer meat.

5. **GFP Obligations.** GFP will be responsible for the following and all costs associated with such:
   
   a. Storing harvested deer carcasses from the time when the deer are harvested, while testing of the deer is being conducted, and until such time as the processor is able to process the deer into ground meat. The cold storage will be made available by GFP between the dates of January 1, 2020 and March 31, 2020;
   
   b. Testing harvested deer for Chronic Wasting Disease and, if needed, any other deer-relevant disease. GFP will determine whether testing is needed for any other deer-relevant disease;
   
   c. Transporting the deer in cold storage to the deer processor once the results of the deer disease testing are complete and the processor is able to process the deer into ground meat; and
   
   d. Disposing of any harvested deer that tests positive for Chronic Wasting Disease or any other deer-relevant disease.
6. **Sportsmen Obligations.** Sportsmen will be responsible for the following and all costs associated with such:

   a. Providing all plastic bags needed for the storage of the processed ground deer meat; and
   b. Paying the processor up to $8,000 for the processing into ground deer meat of up to 100 deer harvested over and above the initial 150 harvested deer that the City is paying to process.

7. **Club Obligations.** Club will be responsible for the following and all costs associated with such:

   a. Paying the processor up to $1,000 for the processing into ground deer meat of deer harvested over and above the initial 150 harvested deer that the City is paying to process. This payment will go towards costs for deer processing that accumulate over and above the $8,000 that is to be paid by Sportsmen.

8. **Term.** The term of this MOU shall begin once all Parties have executed this MOU and shall end on December 31, 2020. This MOU shall automatically renew at the end of the initial term for a period of one year. At the end of each successive one-year term, this MOU shall automatically renew for another one-year term. This MOU may be cancelled prior to any renewal term by either party delivering written notice to the other on or before October 1st of the then-current term.

9. **Annual Appropriations.** The provisions of this MOU which require the City and GFP to expend funds are expressly made subject to annual appropriation by the City and GFP. If, during any subsequent fiscal year the City shall fail to appropriate funds to pay for the activities to be provided hereunder, then and in that event any of the Parties shall have the option to terminate this MOU, and upon any such termination, no party shall have any liability to the other arising from the otherwise unexpired term.

10. **Notices.** All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the Parties at the following addresses:

    - City of Rapid City
      Attn: Parks & Recreation Director
      515 West Blvd.
      Rapid City, SD 57701
    - SD Game, Fish & Parks
      Attn: Trenton Haffley
      4130 Adventure Trail
      Rapid City, SD 57702
    - SD Sportsmen Against Hunger
      Attn: Jeffrey Olson
      1301 West Omaha St., Ste 228
      Rapid City, SD 57701
    - Black Hills Sportsmen Club, Inc.
      Attn: Jeffrey Olson
      1301 West Omaha St., Ste 228
      Rapid City, SD 57701
11. **Change of Contacts.** The parties agree to notify the other Parties of any changes in a Party’s point of contact or the address of business correspondence, within thirty (30) days of said change.

12. **Relationship between the Parties.** The relationship of the Parties is that of independent contractors. The Parties are not, by virtue of this MOU or otherwise, in an employer-employee, principal-agent, joint venture or partnership relationship with each other, and each Party agrees not to represent to any other person, or to assert in any form or forum to the contrary. No Party is authorized to act as an agent for, or legal representative of, the other Party and no Party has the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other Party.

13. **Non-Discrimination.** The Parties shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons, in any manner prohibited by local, state or federal laws. The Parties further agree to comply with any requirements made to enforce the foregoing which may be required of or by the City.

14. **Waivers.** The failure by one Party to require performance of any provision herein shall not affect that Party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this MOU constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

15. **Integration.** This MOU contains the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

16. **Amendments.** This MOU may only be amended by a written document duly executed by all Parties.

17. **Counterparts.** This MOU may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one MOU.

18. **Construction.** The language in all parts of this MOU shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any Party. The headings and numbering of the different paragraphs of this MOU are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The Parties agree that each party has reviewed this MOU and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this MOU shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this MOU.

Nothing in this MOU shall be construed as an indemnification by one party of the other for liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses
(including reasonable attorney’s fees) of whatsoever kind and nature, imposed on, incurred by or asserted against a party for property loss, injury, death, or damage. Any liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney’s fees) caused by or resulting from the conduct or omissions of a party or its officers, employees, or agents shall be determined according to applicable law, subject to all available defenses and immunities.

19. **Severability.** If any provision of this MOU is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this MOU, which shall remain in full force and effect.

20. **Jurisdiction and Venue.** The Parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this MOU, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, Pennington County South Dakota.

Dated this _____ day of ______________, 2019.

**CITY OF RAPID CITY**

__________________________________________
ATTEST Mayor, Steve Allender

__________________________________________
Finance Officer, Pauline Sumption
(SEAL)

Dated this _____ day of ______________, 2019.

**SOUTH DAKOTA GAME, FISH AND PARKS**

__________________________________________
Secretary, Kelly Hepler
Dated this _____ day of ______________, 2019.

SOUTH DAKOTA SPORTSMEN AGAINST HUNGER

________________________________________
President, Jeffrey Olson

Dated this _____ day of ______________, 2019.

BLACK HILLS SPORTSMEN CLUB, INC.

________________________________________
President, Cody Hodson