

AGREEMENT BETWEEN THE CITY OF RAPID CITY  
AND BH SERVICES, INC.  
FOR PARKS AND RECREATION DEPARTMENT CUSTODIAL SERVICES

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Rapid City (“City”), a municipal corporation organized under the laws of the state of South Dakota, of 300 Sixth Street, Rapid City, SD 57701, and BH Services, Inc. (Contractor), 3650 Range Rd., Rapid City, SD 57702. The parties agree to the following terms:

1. Purpose of Agreement. The purpose of this Agreement is to outline the responsibilities of the parties regarding the custodial services the Contractor will provide to City for various facilities within the Parks and Recreation Department including gates and restroom facilities.

2. The Contractor agrees to provide custodial services to the City at various facilities as listed in the Parks and Cemetery Specification document attached hereto. Addendums may be made to the “Parks and Cemetery Specifications” document upon mutual agreement in writing of the parties.

3. Term. The term of this Agreement is for one (1) year beginning on January 1, 2021 and continuing through December 31, 2021.

The City may terminate this Agreement for any reason. If it wishes to terminate the Agreement, City will provide written notice of termination at least thirty (30) days prior to the date of termination.

The City may renew the Agreement for a one-year term upon the same terms and conditions no more than three (3) times by providing written notice of renewal no less than thirty (30) days prior to the end of the term.

4. Payment. Contractor agrees to bill City by invoice for services on a monthly basis. City shall remit payment to Contractor within forty-five (45) days of each invoice. Payment shall not exceed \$66,880.12 in any calendar year.

In case of errors or inquiries about an invoice, City agrees to send a written inquiry to Contractor stating a description of the error and why City believes it is an error and the dollar amount of the suspected error. City agrees that it is obligated to pay the parts of the invoice that it is not disputing. The parties agree that City does not need to pay the amount in question during the time the parties are resolving the dispute. The parties agree that Contractor may not take any action to collect disputed amounts or report disputed amounts as delinquent during the time the parties are resolving the dispute.

If City fails to make payments when due, Contractor at its option may cancel any unfulfilled portion of this Agreement, without further liability and all work theretofore completed shall thereupon be invoiced and be due and payable within 45 days of City’s receipt of the invoice.

5. Insurance. The Contractor shall obtain and maintain, at its expense, the following minimum limits of occurrence based insurance coverage for the duration of this agreement:

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$500,000
B. Comprehensive General Liability  (Including Contractual Liability and Completed Operations) Bodily Injury and Property Damage General Aggregate	  \$1,000,000 each occurrence \$2,000,000
C. Commercial Automobile Liability	\$1,000,000 combined single limit

Such insurance policies shall name City as an additional insured with respect to all activities arising out of the performance of the Work and/or services under this agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the Department before commencing any work and/or services. Such Certificates shall afford City thirty (30) days written notice of cancelation or material change of coverage. Department's failure to obtain from Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity area. Contractor may invoice City up to Two Hundred Fifty Dollars to compensate for the cost of the Certificates provided in this section.

6. Indemnification and Hold Harmless. Contractor agrees to indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. Contractor also agrees to indemnify and defend City, its officers, agents and employees against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by Contractor.

7. Notification to City of damage. Contractor agrees to promptly report any vandalism, unsafe conditions, or repair needs to the Parks Division Office as soon as is possible. Contractor shall contact 911 Emergency to report any witnessed acts which violate City ordinance or park regulations. Contractor agrees that it will not respond in such a situation by contacting any offending individuals. Contractor agrees to gather any appropriate information regarding such events and forward it to the Parks Division Office.

8. Confidentiality. Contractor will hold all incident reports or other information, in any format whatsoever, confidential and will share it only with such City staff as the City

designates. No information will be provided by the Contractor to outside parties unless specifically directed in writing by the City.

9. Relationship between the Parties. Contractor is an independent contractor of the City. This Agreement does not create an employment relationship between the City and Contractor or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Contractor and the City of Rapid City. No agent of Contractor shall be the agent of the City, and Contractor covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

10. Time of Essence. Time is of the essence of this Agreement.

11. 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 Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

12. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

13. Entire Agreement. This Agreement, along with the Request for Proposals and the Contractor's proposal, constitute the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

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

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

16. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

17. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

