LEASE AGREEMENT BETWEEN CITY OF RAPID CITY
AND BLACK HILLS FARMER’S MARKET, INC.

For and in consideration of the mutual promises and agreements contained herein, the CITY OF RAPID CITY ("City"), a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 agrees to lease to Black Hills Farmer’s Market, Inc. ("Lessee"), a nonprofit corporation organized under the laws of the State of South Dakota, a specified area subject to the following terms and conditions:

1. Consideration. The City hereby leases to Lessee the below described premises ("Premises") for the sum of One Dollar ($1.00) and other good and valuable consideration, including but not limited to, maintenance of general grounds and payment of all utility bills. Said sum is payable to the City of Rapid City on or before the first day of January of each succeeding year.

2. Term and Renewal. The term of this Agreement is from November 1, 2021 to December 31, 2022. Any future agreements between the parties related to the Premises shall be under the terms and conditions mutually agreed to by the parties at that time. This Agreement will renew automatically for two-year terms after the initial term, unless either party gives the other party written notice of nonrenewal at least 60 days before the new term commences.

3. Premises. The Premises leased by the City to Lessee is a portion of the property that is commonly known as 245 E. Omaha Street and legally described as follows:

Tract 28, Rapid City Greenway Tract, Rapid City, Pennington County, South Dakota.

See Attachment A that includes a map with boundaries of the Premises clearly distinguished. The Premises is located south of E. Omaha Street, east of Elm Avenue, west of Steele Avenue, north of E. Main Street N. and immediately adjacent to the west bank of Rapid Creek.

4. Use of Premises by Lessee. Lessee will be able to use the Premises during the lease period, subject to the terms of this Agreement, for the purpose of holding an open air market offering fresh agricultural products for sale directly to the consumer and maintaining the Premises. The City designates Lessee’s conduct of holding an open air market at the Premises to be a community activity pursuant to Rapid City Municipal Code 17.50.230.K., subject to the conditions and limitations in this Agreement. Additionally, Lessee agrees to cooperate with City’s use of the Premises in compliance with this Agreement.

5. Surrender of Premises. Lessee agrees to surrender the Premises, or a part thereof, in the event it is necessary for expansion or utilization of public park facilities or for any other purpose which City believes is necessary or important. In such case, the City will give Lessee thirty days written notice. Lessee further agrees to abandon the Premises, or a part thereof, in the event a demand is made by the United States government. Lessee agrees to abandon the Premises, or a part thereof, in the event that Lessee or City is ordered to do so by an order of any Court.
6. **Use by the City.** Lessee agrees that the City may use the Premises when the Premises are not required for use by Lessee. If the City uses the Premises under this Section, it agrees to leave the Premises in substantially the same condition, reasonable wear and tear excepted. For purposes of this Section, City use shall mean organized activities conducted or sponsored by the City.

7. **Contacts.** Anything required by the Agreement to be delivered to Lessee in writing shall be delivered to the following contact for Black Hills Farmer’s Market, Inc.: Barbara Cromwell, Manager Black Hills Farmer’s Market, Inc., [manager@blackhillsfarmersmarket.org](mailto:manager@blackhillsfarmersmarket.org). Lessee has a continuing obligation to ensure that the Rapid City Director of Parks and Recreation (“Director”) has accurate contact information for Lessee and to notify the Director of any changes to the contact information herein.

Unless otherwise specified in this Agreement, the contact for the City will be: Director of Parks and Recreation, 515 West Boulevard, Rapid City, SD 57701, (605) 394-4175.

8. **Maintenance.** Lessee agrees to maintain said Premises under the authority of the Parks and Recreation Director or his/her designee.

8.A. **Lessee Responsibilities.**

   i. **Property Damage.** Lessee agrees to repair or replace any property damaged, either willfully or accidentally, by its members or invitees which occurs to the Premises. Lessee is entitled to recover costs for damage or to require repairs for damages or improper maintenance that occurs while the Premises is used by a third party or parties.

   ii. **Trash and Recycling.** Lessee agrees to be responsible for policing the Premises and picking up and making ready for City collection of all trash, recyclables, debris, and waste material of every nature found at the Premises. Lessee also agrees to place all collected trash, recyclables, debris, and waste in a designated location for removal by the City. Lessee agrees that it will not place yard waste or building materials in City trash receptacles. Lessee agrees to promote and encourage recycling throughout the Premises.

   To avoid the public’s misuse of trash and recycling receptacles during the off-season, Lessee agrees to move all trash and recycling receptacles to an area of the Premises that is inaccessible to the public, as approved by the Parks Department, immediately after the end of the season.

   iii. **Notification to City.** Lessee agrees to promptly notify in writing City if it observes any needed maintenance to sidewalks, parking areas, trees or other items that the City is obligated to maintain under Section 8.B or any items other than those which the Lessee is obligated to maintain. Lessee may provide the written notification by e-mail to the Parks Division Manager. At the time of this
iv. **Structures and Buildings.** Lessee is responsible for all maintenance and repair of any structures and buildings on the Premises. This responsibility includes, but is not limited to, cleaning all structures and buildings on a regular basis, painting and staining the structures and buildings and maintaining/repairing/replace siding, fascia, soffits, plumbing, flush valves, drinking fountains, water heaters, bleachers, and other fixtures as applicable. Lessee is responsible for all maintenance and repair of lighting systems and all other electrical systems. This responsibility includes, but is not limited to, replacing light bulbs in lighting systems, repairing damage to lighting systems, and repairing wiring in electrical systems. Lessee is also responsible for all maintenance and repair of fences and signage.

v. **Winterization.** Lessee shall ensure that all building systems, such as plumbing, electrical, and heating and cooling systems, are operational through the season to ensure proper winterization at the end of the season. Lessee shall report any modifications to the building systems to Parks Division prior to the end of the season to ensure proper operation and winterization.

vi. **Copyrights.** Lessee will not perform publicly any copyrighted content, including but not limited to live music or broadcast music (from recordings, radio, television, or via streaming services) without the proper authorization from the copyright holder. Lessee will abide by all copyright laws in conjunction with Lessee’s use of the Premises. Lessee will indemnify, defend, and hold harmless the City, its common council, officers, employees, and agents against all claims, expenses and losses resulting from any copyright infringements by Lessee that occurred on City property.

8.B. **City Responsibilities.**

i. **Trash and Recycling.** City will provide 95-gallon receptacles for use at the Premises and will remove trash on a regular schedule.

ii. **Unique or Unusual Maintenance.** City, at its own expense, agrees to provide unique or unusual maintenance and routine maintenance to the infrastructure, including but not limited to, repair of broken water mains, sewer, storm sewer and all repairs and surface maintenance of parking lots, roads, sidewalks, and pathways.

iii. **Winterization.** On or about October 1 of each year, City shall winterize the buildings/structures on the Premises. An official from the Parks Department shall contact Lessee to schedule a mutually agreeable winterization date. Lessee shall provide the Parks Department with an accurate list of contacts prior to September 15 to ensure City’s efficient access to the Premises and its facilities. Lessee shall
have all systems in working order on the winterization date to ensure proper winterization.

iv. Trees. City will provide maintenance to all trees on Premises, including hazardous tree removal, broken limb removal and corrective pruning. No tree shall be planted or removed without prior approval from the Parks Division.

v. Mowing. City will mow the Premises on a routine basis so the grass height does not exceed 8 inches at any given time.

9. Changes to the Premises. The parties acknowledge that at the inception of the initial term of this Agreement, Lessee is in the process of planning improvements to the Premises. If Lessee is going to construct any improvements, Lessee will be responsible for obtaining all necessary permits and approvals and for providing any required paperwork, fees, and/or exhibits required to obtain the permits or approvals or to otherwise complete the planning and development review process. No construction or installation of any improvements to the Premises shall occur until the Director of Parks and Recreation or his/her designee has given written approval to the proposed construction. Lessee shall promptly notify the Director of its intentions to construct or install any improvements upon the Premises, and Lessee agrees that it will not perform any such construction unless and until it receives written approval from the Director. With prior written approval of the plans by the Director of Parks and Recreation or his/her designee, Lessee may construct accessory and customarily incidental improvements to the Premises. Any construction or installation of any improvements shall be in conformity with the municipal codes of the City, including any construction within the floodplain or floodway. The parties agree that any permanent improvements or fixtures constructed by Lessee on the Premises are the property of the City.

City may construct any improvements to the Premises. If City is going to construct any improvements, City will be responsible for obtaining all necessary permits and approvals and for providing any required paperwork, fees, and/or exhibits required to obtain the permits or approvals or to otherwise complete the planning and development review process. Any permanent improvements or fixtures constructed by City on the Premises are the property of the City.

10. Fees Charged to the Public. Lessee agrees that all fees charged by Lessee to the public for entrance, use, or access to the Premises shall be competitive with fees charged by similar private facilities. City shall have the right to request information related to fees charged by Lessee to the public for access or use of the facilities and to request information from Lessee that support the competitiveness of any such fees with similar private facilities. Upon receipt of such a request, Lessee shall timely provide the requested information. If City determines that the fees are not in compliance with this Section, then Lessee shall adjust its fees in accordance with the City’s direction.

11. Non-Discrimination. The parties agree that Lessee shall comply with all civil rights and accessibility legislation, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, and Lessee 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. By signing this Agreement, Lessee certifies that it complies, and
will continue to comply, with this nondiscrimination requirement.

12. Assignment or Subletting. This Agreement shall not be assigned, nor the
Premises subleased, by Lessee except on written consent and approval from the Director of Parks
and Recreation. The fee(s) or payment(s) charged by Lessee for any assignment or sublease
shall be limited in value to the costs Lessee will incur pursuant to this Agreement, as applicable.

Requests for City approval of an assignment of this Agreement shall be submitted to the Director
of Parks and Recreation no less than sixty (60) days before the assignment is intended to be
effective. Requests for City approval of a sublease to this Agreement shall be submitted to the
Director of Parks and Recreation no less than forty-five (45) days before the sublease is intended
to be effective. All such requests for approval shall include a copy of the assignment/sublease
and all relevant information, including any payment made as part of the sublease. City reserves
the right to withhold consent for any such assignment or sublease, or to negotiate further with
Lessee and with intended assignee/sublessee with regard to rights to the Premises, or to enter into
a separate Agreement with assignee/sublessee and/or Lessee with regard to the intended
assignment or sublease of all or a portion of the Premises.

13. Expense. City shall assume no expenses as a result of this Agreement or any of
the operations of Lessee except for those expenses generated as a result of City’s responsibilities
specifically discussed in this Agreement. Lessee agrees to pay its own administration expenses,
including but not limited to, lights and electricity, grounds crew, office supplies, miscellaneous
equipment, and secretarial fees. Lessee agrees that the electric utilities will be metered in the
name of and billed directly to Lessee and that all expenses incurred by it shall be paid within
thirty (30) days of due date. If Lessee obtains gas utilities, Lessee agrees that the gas utilities
will be metered in the name of and billed directly to Lessee and that all expenses incurred by it
shall be paid within thirty (30) days of due date.

Unless otherwise agreed to by the City, Lessee agrees to provide all funds and resources for use
and maintenance of the Premises discussed in this Agreement. All costs expected and
unexpected will be paid by Lessee unless other arrangements are made with the City. If Lessee
makes any improvements to the Premises that are paid for with public funds, Lessee shall
comply with applicable bid laws.

14. Termination of Agreement. The City reserves the right to periodically review the
performance of Lessee to evaluate compliance with the terms of this Agreement. Either party
may terminate the Agreement for breach of this Agreement upon thirty (30) days written notice
to the breaching party. If the breaching party does not cure the breach prior to the date of
termination, then the other party may terminate the Agreement. If the breaching party attempts
to diligently cure the breach, to the extent such breach cannot be reasonably cured within thirty
(30) days, the other party may grant additional time to cure as it deems appropriate, but is under
no obligation to do so.
This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the City Council for this Agreement’s purpose. If for any reason the City Council fails to appropriate funds or grant expenditure authority, or if funds become unavailable by operation of law, this Agreement will be terminated by the City by written notice. Termination for any of these reasons is not a default by the City nor does it give rise to a claim against the City.

If Lessee shall dissolve, become insolvent or otherwise unable to fulfill the terms of this Agreement, or abandon the use of the Premises, this Agreement shall terminate and Lessee shall have no further rights hereunder. Discontinuation of use of all or part of the Premises for maintenance, repair or rehabilitation purposes of the Premises shall not be deemed abandonment. If Lessee changes the character of its operation significantly from that of a nonprofit corporation, this Agreement shall terminate and Lessee shall have no further rights hereunder.

15. Liability. Lessee agrees that the City shall be held harmless from any and all liability arising from any operation or use under this Agreement of the described Premises by Lessee or its agents or employees or any other person using the Premises. Lessee further agrees to indemnify and defend the City against any and all claims arising from the operation or use under this Agreement of the described Premises by it and its agents, employees, assignees, invitees or any other person using the Premises. The parties agree that Lessee may enter into separate agreements with other users of the Premises to hold harmless Lessee and its directors, members, employees, and agents from claims arising from the use of others as discussed in this Agreement.

Lessee agrees to purchase and maintain bodily injury and property damage insurance for each occurrence of injury or damage in the minimum amount of One Million Dollars ($1,000,000) for each occurrence of injury or damage and an aggregate limit of not less than Two Million Dollars ($2,000,000). The City shall be named an additional insured in said policy or policies and the Lessee shall furnish to the City evidence of insurance by a certificate of insurance of required coverage. The parties agree that the City may adjust these insurance requirements on an annual basis and will provide written notice to Lessee of any additional requirements for insurance required by this Section.

16. Public Accounting. If the City makes a written request for a public accounting of Lessee’s financial transactions for an operating year that falls within the term of this Agreement, Lessee agrees to provide the Director of Parks and Recreation with a public accounting of its financial transactions. Lessee agrees to provide the public accounting within 60 days of the City’s written request. Such accounting shall be in the form of a report of income and expenses and a balance sheet of Lessee’s assets and liabilities for the requested operating year.

17. City Authority. All matters pertaining to the terms of this Agreement shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota. The City Council appoints and delegates the Director of Parks and Recreation as the primary contact point for City with Lessee in administering and fulfilling the terms of this Agreement.
18. **Relationship between the Parties.** This Agreement does not create any employee/employer relationship between the City of Rapid City and Lessee, its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Lessee and City, and no agent of Lessee shall be the agent of City. Lessee 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.

19. **Integration.** The parties agree that this Agreement, along with any attachments, constitutes the entire understanding between the parties and supersedes all prior negotiations, agreements, and understandings, whether oral or written.

20. **Savings Clause.** Should any portion of this Agreement be declared void, the remainder of the Agreement shall remain in full force and effect.

21. **Choice of Law.** This Agreement shall be governed by the laws of the State of South Dakota and any action to enforce the terms of this Agreement shall be venued in the 7th Judicial Circuit, Pennington County, South Dakota.

22. **Waivers.** The failure by one party to require performance of any provision of this Agreement 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.

23. **Amendments.** This Agreement may only be amended by a written document duly executed by both parties.

24. **Headings.** The headings and numbering of the different sections of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of any provision.
Dated this ___ day of _________________, 2021.

CITY OF RAPID CITY

__________________________________________
Steve Allender, Mayor

ATTEST:

__________________________________________
Finance Director
(SEAL)

State of South Dakota)
   ss.
County of Pennington)

On this the ___ day of __________, 2021, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

__________________________________________
Notary Public, South Dakota
My Commission Expires: ____________
(SEAL)
Dated this 23rd day of September, 2021.

BLACK HILLS FARMER’S MARKET, INC.

By: Barbara Cromwell
Its: Market Manager

State of South Dakota

County of Pennington

On this the 23rd day of September, 2021, before me, the undersigned officer, personally appeared Barbara Cromwell, who acknowledged himself/herself to be the manager of Black Hills Farmers Market, and that he/she, as such manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

DAWN ERK
NOTARY PUBLIC
State of South Dakota

Notary Public, South Dakota
My Commission Expires: July 5, 2025.