AGREEMENT BETWEEN THE CITY OF RAPID CITY 
AND BH SERVICES 
FOR PARKS DEPARTMENT CUSTODIAL SERVICES 

This Agreement is entered into this 25th day of October, 2016, 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 (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 Contractor will provide to City for 
   various facilities within the Park System including restroom facilities, picnic shelters, offices and 
   shop areas.

2. **Custodial Services.** Contractor agrees to provide the custodial services discussed in 
   the Request for Proposals for Park Facility Custodial Services, attached hereto. Contractor agrees 
   to furnish all necessary labor, material and equipment to complete the custodial services described 
   in Request for Proposals, unless otherwise specified in this Agreement.

   All custodial services provided by Contractor will be subject to the approval by the 
   Director of Parks and Recreation or his designee. City reserves the right to inspect the custodial 
   services provided by Contractor at any time, with or without advance notice. If City inspects any 
   area in which Contractor performed custodial services and determines that the services provided do 
   not meet its requirements, City will promptly notify Contractor of the deficiency. Contractor 
   agrees to remedy the deficiency within 24 hours of notification of the deficiency, unless additional 
   time is requested by Contractor and the request is granted by the City.

3. **City Obligations.** City agrees to provide all trash liners, soap, paper towels, and 
   toilet paper to stock the restrooms and other facilities.

4. **Term.** The term of this Agreement is for three (3) years beginning on January 1, 
   2017 and continuing through December 31, 2019.

   Either party may terminate this Agreement for any reason. The party so terminating this 
   Agreement must provide written notice of termination at least thirty (30) days prior to the date of 
   termination. If either terminates the Agreement, City agrees to pay Contractor for custodial 
   services provided prior to termination which were accepted by the City.

5. **Payment.** Contractor agrees to bill City by invoice on a monthly basis in the 
   amount of $8,843.49. City shall remit payment to Contractor within forty-five (45) days of each 
   invoice.

   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.

6. **Insurance and Indemnification.** Contractor will furnish proof of general liability insurance in the minimum amount of $1 million per occurrence and $2 million aggregate. Contractor agrees to indemnify and hold harmless the City against any claims, demands and causes of action arising out of the performance of the terms of this Agreement. Such insurance policies shall name City as an additional insured with respect to all activities arising out of the performance of this Agreement, and shall afford City thirty days written notice of cancellation or material change of coverage. Contractor agrees to provide the City with a Certificate of Insurance confirming this coverage within thirty days of execution of this Agreement.

7. **Employee Benefits and Requirements.** Contractor agrees to provide its employees for the work and agrees to pay all benefits, insurance and workers compensation costs that Contractor would normally pay their employees for this work.

8. **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.

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 constitutes 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.

18. **Authority.** This Agreement is made and entered into by the City of Rapid City pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.

Dated this _____ day of ____________, 2016.

CITY OF RAPID CITY

ATTEST:

Mayor

______________________________________________

Finance Officer

(SEAL)
CONTRACTOR

By Dawn Wozza
It's Director

STATE OF SOUTH DAKOTA )
) ss.
COUNTY OF PENNINGTON )

On this the 25th day of October, 2016, before me the undersigned officer, personally appeared Dawn Wozza, who acknowledged himself/herself to be the Director of BH Services of Rapid City, and as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of BH Services.

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

Connie K. Hansen
Notary Public, State of South Dakota
My Commission Expires: 6/13/2021