LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BLACK HILLS VISITOR INFORMATION CENTER DEVELOPMENT CORPORATION

For and in consideration of the mutual promises and agreements contained herein, the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter the “City”), agrees to lease to BLACK HILLS VISITOR INFORMATION CENTER DEVELOPMENT CORPORATION, a South Dakota nonprofit corporation d/b/a Black Hills & Badlands Tourism Association, of 1851 Discovery Circle, Rapid City, South Dakota 57701 (hereinafter “Association”), the real property described below subject to the following terms and conditions:

1. **Property.** The City hereby leases to Association the real property legally described as follows:

   Lot 1R of Tract 3 of Discovery Subdivision, Rapid City, Pennington County, South Dakota.

The property includes the building known as the Visitor Information Center, located at 1851 Discovery Circle. The property is shown on Exhibit A attached hereto and incorporated herein by this reference. The property leased to the Association shall be hereinafter referred to as the “Leased Premises.”

2. **Term.** The term of this Lease Agreement shall begin on the execution of this Lease by the parties, and shall end on December 31, 2037. This Lease may be terminated by either party giving notice of its intent to terminate said lease with one hundred eighty (180) days’ notice.

3. **Consideration.** Association agrees to pay the City One Dollar ($1) rent for the initial term. The parties further agree that the mutual covenants and promises contained herein shall constitute good and sufficient consideration for the execution of this Lease Agreement.

4. **Possession.** Association shall be entitled to possession of the property upon execution of this Lease by both parties.

5. **Use.** Association shall have use of the leased premises during the term hereof, subject to the terms of this Lease Agreement, for the purpose of operating a visitor information center and to maintain its business offices. Association shall make no use of the property and/or facilities inconsistent with such uses, and Association shall comply with all federal, state, and local laws and regulations in carrying out said use. Association shall not use the leased premises for the purposes of storing, manufacturing or selling any hazardous materials.

6. **Maintenance.** All maintenance of the leased premises shall be provided by Association including but not limited to keeping all grounds, sidewalks, trees, shrubbery, buildings, and all other structures in an attractive, safe, and repaired condition. Association shall be responsible for all infrastructure maintenance and upkeep, including but not limited to fixtures, utility service lines, parking lots, HVAC and other building systems, and structural repairs.
7. **Former Lease – Capital Account.** The City agrees to release and remit to Association any funds held for capital improvements to the Leased Premises pursuant to the prior lease agreement between the parties.

8. **Construction Approval.** Construction and other new improvements at the premises shall be in conformity with the regulatory and building codes of the City and subject to the approval of the Public Works Director or his designee. Any denial by the Public Works Director may be appealed to the Common Council. Any permanent improvements or fixtures constructed by Association on the leased premises shall be considered the property of the City.

9. **Insurance.** The Association will maintain comprehensive general liability insurance to cover the Leased Premises. The minimum amount of insurance coverage shall be $2,000,000 per each occurrence of bodily injury and property damage, and $3,000,000 aggregate. A combination of liability insurance and an umbrella policy to obtain such limits shall be acceptable. The Association also agrees to maintain appropriate property insurance coverage on the actual structure. The structure shall be insured at a value of $2,000,000, with a deductible of no more than $50,000. The City should be named as an additional insured on the Association’s insurance policy or policies. The Association shall provide the City with proof of insurance coverage meeting the minimum standards of this paragraph upon request. The Association agrees to defend, indemnify and otherwise hold the City harmless for any claims made by its employees or visitors against the City, to the extent such claims are not based on the alleged actions or omissions of the City or its agents.

10. **Termination.** The City shall have the option of terminating this Lease immediately without notice if any of the following instances of default occur:

   a. Association abandons the premises;
   b. Association dissolves or is administratively dissolved;
   c. Association enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise;
   d. The character of Association’s operation changes significantly from that of a nonprofit organization; or
   e. Association defaults in its compliance with any other term or covenant hereunder, which default is not cured within thirty (30) days after notice is given.

   Should the City choose to exercise its option to terminate this Lease immediately pursuant to this section, such termination will be effective upon mailing of written notice to Association, at which time Association shall have no further rights under this Lease.

11. **Surrender of Premises.** Association agrees to surrender and vacate the leased premises upon termination of this Lease Agreement.

12. **Liability.** Association agrees to defend, hold harmless, and indemnify the City from any and all legal liability, including reasonable attorney fees, in respect to bodily injury, death, and property damage arising from the negligence of the Association in the occupation or use of the leased premises by Association, its officers, directors, agents and/or employees.
13. **Assignment and Subletting.** This Lease shall not be assigned nor shall the Leased Premises be sublet by Association except upon written consent and approval of the City.

14. **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: Finance Officer
  - 300 Sixth Street
  - Rapid City, SD 57701

- **Black Hills Badlands & Lakes Association**
  - Attn: CEO
  - 1851 Discovery Circle
  - Rapid City, SD 57701

15. **Condition of Premises; No Warranties; Release.** The taking of possession of the leased premises by the Association shall be conclusive evidence that the Association (i) accepts the premises as suitable for the purposes for which same are leased; (ii) accepts the premises and each and every part and appurtenance thereof as being in a good and satisfactory condition, and (iii) waives any defects in the premises and its appurtenances. IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED HEREUNDER “AS IS,” WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY THE CITY OF RAPID CITY. The City has not made (except as expressly set forth herein) any representations or warranties of any kind or character whatsoever, express or implied, with respect to the premises, its condition (including without limitation any representation or warranty regarding suitability, habitability, quality of construction, workmanship, merchantability, or fitness for a particular purpose), environmental condition or compliance with environmental or other applicable laws, and the Association acknowledges that it is entering into this Lease Agreement without relying upon any such statement or representation or warranty. The City shall not be liable, and Association hereby releases the City, for injury or damage which may be sustained by Association, or any invitee or their property, caused by or resulting from the state of repair of the premises.

16. **Relationship between the Parties.** This Lease Agreement does not create an employment relationship between the City of Rapid City and Association’s officers, directors, agents or employees. Nothing contained in this Lease is intended to create a partnership or joint venture between the Association and the City of Rapid City. No agent of Association shall be the agent of the City, and Association 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.

17. **Non-Discrimination.** Association 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. Association further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

18. **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 Lease Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
19. **Binding Effect.** This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

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

21. **Time of Essence.** Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

23. **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.

24. **Severability.** The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

25. **Construction.** The language in all parts of this Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement.

26. **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 Agreement, 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, South Dakota.
DATED this ______ day of _____________________, 2017.

CITY OF RAPID CITY

__________________________________________
Mayor

ATTEST

__________________________________________
Finance Officer

(seal)

State of South Dakota   )
) ss.
County of Pennington    )

On this the _____ day of _____________________, 2017, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, 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 Officer.

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

(seal)   Notary Public - South Dakota
My Commission Expires ____________________
BLACK HILLS VISITOR INFORMATION CENTER DEVELOPMENT CORPORATION

By ________________________________

Michelle Thomson, President

By ________________________________

Mistie Caldwell, Chair of the Board of Directors

State of South Dakota )

) ss.

County of Pennington )

On this the ____ day of ________________, 2017, before me, the undersigned officer, personally appeared Michelle Thomson known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged herself to be the President of Black Hills Visitor Information Center Development Corporation, and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(seal)

Notary Public - South Dakota
My Commission Expires ________________

State of South Dakota )

) ss.

County of Pennington )

On this the ____ day of ________________, 2017, before me, the undersigned officer, personally appeared Mistie Caldwell, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged herself to be the Chair of the Board of Directors of Black Hills Visitor Information Center Development Corporation, and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(seal)

Notary Public - South Dakota
My Commission Expires ________________