

**LEASE AGREEMENT BETWEEN CITY OF RAPID CITY  
AND BLACK HILLS SPORTS, 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 Sports, Inc. (“BHS” or “Lessee”), a South Dakota corporation organized under the laws of the State of South Dakota, a specified area to operate a youth baseball program, 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, administration of a youth baseball program open to the citizens of the City, 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 January 1, 2018 (“Effective Date”) to December 31, 2020**. 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.

3. Premises. The Premises leased by the City to Lessee are legally described as follows:

A portion of Rapid City Greenway Tract 8, located in Section 3, Township 1N, Range 7E, Rapid City, Pennington County, South Dakota.

*See Attachment A (map with boundaries of Premises clearly distinguished).*

4. Use of Premises by Lessee. Lessee shall have priority use of the Premises during the lease period, subject to the terms of this Agreement, for the purpose of administration of a youth baseball program. Lessee agrees to cooperate with City’s use and others’ 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. Lessee further agrees to abandon the Premises, or a part thereof, in the event the demand is made by the United States government, or 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, and such use by the City shall be consistent with the normal usage of said Premises. City agrees that it will restore and/or contribute to the maintenance of the Premises consistent with use by the City. 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. Use by Others. Lessee shall allow other persons or organizations to use the Premises if the Premises are not in bona fide use by the Lessee, and Lessee may require that such use by others shall be consistent with the normal usage of said Premises. This use is in addition to any assignment or sublease of the Premises, which is addressed in Section 13.

In addition to the provisions in Section 6, Lessee agrees to allow other persons or organizations to use the Premises at the City's direction, subject to reasonable terms and conditions, even if it interferes with Lessee's use of the Premises as provided in Section 4. City and Lessee agree that Lessee will have the opportunity to review proposals for such use of the Premises at least six months in advance, or before the schedule for the season is complete, whichever is later. If other persons or organizations use the Premises, Lessee may be compensated for use of the Premises and/or offered the opportunity to work on the event and earn compensation for its program. Both parties agree that Lessee or its designee shall participate in the local organizing committee, if any, that is charged with reviewing and fully considering any proposals for use of the Premises by others.

8. Lessee Obligations.

8.A. Change of Contacts and Officers. Lessee agrees to provide the Director of Parks and Recreation with accurate contact information for officers of Lessee, no later than 30 days after officer elections. Lessee has a continuing obligation to ensure that Director has accurate contact information for Lessee and to notify Director of any officer changes within thirty (30) days after said change. Attached to and incorporated by reference into the terms of this Agreement are the names and addresses of the current office holders of Lessee.

8.B. Changes to the Premises. No construction or installation of any improvements to the Premises shall occur until the Director or his designee has given prior 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. The parties agree that any permanent improvements or fixtures constructed by Lessee on the Premises are the property of the City.

9. Maintenance.

9.A. Lessee Responsibilities.

i. Property Damage. Lessee agrees to maintain said Premises under the authority of the Parks and Recreation Director or his/her designee. 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

damages or to require repairs for damages or improper maintenance that occurs while the Premises is used and controlled by others, including those enumerated in Sections 6 and 7 of this Agreement.

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, resulting from its use of the Premises by itself or any spectators in attendance 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, within fourteen days of the end of the season.

iii. Game Days. Lessee is responsible for preparation of the playing fields prior to all scheduled game days.

iv. Grass and Weeds. Lessee shall mow any grass areas within the Premises on a substantially weekly basis. Lessee shall control weeds and grass inside and outside of fence lines through string trimming or chemical vegetation control methods. This obligation includes the backstop fence, foul fence lines, and the outfield fence. If the Premises includes other exterior fences around a portion or all of the Premises, Lessee shall control grass/weeds in such fence lines and five feet outside of the fence. If Lessee fails to mow the grass or control weeds and grass within the fence lines as required by this section, the Parks Division Manager may mow the areas and charge Lessee at the rate of One Hundred and Twenty-Five Dollars (\$125.00) per hour for each person and machine used, provided that the Parks Division Manager: (1) determines the need for mowing; (2) gives Lessee three (3) days' notice of his intent to do so if Lessee fails to mow; and (3) determines he/she has the available manpower and equipment to perform the mowing. Should the Parks Division Manager not have the available personnel and equipment, he/she can arrange for a private contractor to mow at the expense of Lessee.

v. 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 9.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 Agreement, the email addresses for the Parks Division Manager is [scott.anderson@rcgov.org](mailto:scott.anderson@rcgov.org).

vi. Irrigation System. Lessee is responsible for the day to day operation, adjustment, maintenance and replacement of the sprinkler heads on the automatic irrigation system. Lessee shall run water through each zone on the system and visually inspect each sprinkler head at least twice a month to ensure proper operation of sprinkler heads. Lessee shall replace sprinkler heads with heads of the same make and type, unless a different sprinkler head is approved by the Parks Division Manager or his designee. Lessee is responsible for maintenance and repair of all lateral irrigation piping.

In lieu of Lessee being charged for water usage for irrigation of the Premises, each irrigation system shall be connected to City's central control irrigation system. Connection to the central control irrigation system will be performed by the Rapid City Parks Maintenance Division. All maintenance and changes to a specific watering program shall be performed by the Parks Department water managers, and Lessee may request modifications through email to the Parks Department Office. At the time of execution of this Agreement, the email addresses for the Parks Department staff are [aaron.weeks@rcgov.org](mailto:aaron.weeks@rcgov.org) and [scott.anderson@rcgov.org](mailto:scott.anderson@rcgov.org).

vii. Structures and Buildings. Lessee is responsible for all maintenance and repair of structures and buildings on the Premises. This responsibility includes, but is not limited to, painting and staining the structures and buildings and maintaining/repairing siding, fascia, soffits, plumbing, flush valves, drinking fountains, water heaters, and other fixtures as applicable.

viii. 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 ensure that all irrigation zones are operational with no leaks in piping or sprinkler heads, to ensure proper winterization. Lessee shall report any modifications to the building systems or sprinkler system zones to Parks Division prior to the end of the season to ensure proper operation and winterization.

#### 9.B. City Responsibilities.

i. Field Maintenance. The City will provide maintenance to the fields that are specified as LWCF Premises during the off season.

ii. Trash and Recycling. City will provide 300 gallon trash and recycling receptacles for use at the Premises and will remove trash on a regular schedule.

iii. 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.

iv. Irrigation. The City shall provide water to the Premises for the purpose of irrigating the facility. The City specifically reserves the right to restrict water usage under this Agreement if water restrictions are placed on other water users within the City. Prior to the start of the season, City will provide charge up and run through the automatic irrigation systems to check for proper operation. City will provide Lessee with a radio for remote operation of the irrigation system, which Lessee shall use for the day to day maintenance, repair, and monitoring of the irrigation system. If the radio is lost, stolen, broken, or is rendered unusable, Lessee shall pay \$1500 for the replacement radio. City is responsible for the maintenance and repair of the following irrigation elements, to the extent applicable: curb stops, backflow prevention devices, backflow enclosures, main line pipings, electric control valves, and controllers. Lessee shall notify Parks Division Water managers by email if any of these irrigation elements are malfunctioning or broken.

v. Winterization. On or about October 1 of each year, City shall winterize the irrigation systems and 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.

vi. 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.

10. Construction. Any construction or installation of any improvements at shall be in conformity with the regulatory 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.

11. 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.

12. 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.

13. Assignment or Subletting. This Agreement shall not be assigned, nor the Premises subleased, by Lessee except on written consent and approval of the City Council. The fee(s) or payment(s) charged by Lessee for any assignment or sublease shall be limited in value to the cost Lessee will incur from utilities and maintenance arising from the assignment or sublease, as applicable.

Requests for City approval of an assignment 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 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.

14. 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.

Unless otherwise agreed to by 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.

15. Termination of Agreement. 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 may be terminated by either party giving notice of its intent to terminate the Agreement on or before October 15 of any year, which termination shall be effective as of January 1 immediately following.

If Lessee shall dissolve, become insolvent or otherwise unable to fulfill the terms of this Agreement, or abandon the use of the Premises for one season, 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 grounds shall not be deemed as abandonment. If Lessee changes the character of its operation significantly from that of a non-profit corporation, then this Agreement shall terminate and Lessee shall have no further rights hereunder.

16. 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 defend the City against any and all claims arising from the operation or use under this Agreement of the described Premises by it, its agents, employees, 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, its directors and members 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.

17. Public Accounting. Lessee agrees to provide the Director of Parks and Recreation with a public accounting of its financial transactions no later than sixty (60) days after the close of its operating year. Such accounting shall be in the form of a report of income and expenses and a balance sheet of Lessee's assets and liabilities. Such accounting shall be made available for public inspection at the City Finance Office.

18. Concession, Advertising, and Naming Rights. Lessee shall have the right to operate concessions for the sale of beverages, food, programs, and other items usually sold in the public parks. Lessee shall have the right to sell advertising space on the inside of the Premises boundaries, and all revenue derived from concessions and advertising shall belong to Lessee. Lessee also agrees to be responsible for cleaning and maintaining the concession area, including restrooms.

Lessee and City shall jointly hold all naming rights for the facilities and Premises, and any naming of fields, buildings, improvements or areas shall be by mutual agreement of the parties. Consent sought by one party from the other shall not be unreasonably withheld.

19. 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.

20. 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.

21. 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.

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

23. 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 7<sup>th</sup> Judicial Circuit, Pennington County, South Dakota.

24. 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.

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

26. 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 \_\_\_\_\_, 2018.

CITY OF RAPID CITY

\_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)



State of South Dakota )  
ss.  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2018, 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.

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_

(SEAL)

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

BLACK HILLS SPORTS, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

State of South Dakota )  
ss.  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, and that he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of \_\_\_\_\_ by himself/herself as \_\_\_\_\_.

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

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_

(SEAL)

Attachment A – Fitzgerald Stadium

