

**LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
THE BLACK HILLS AREA CHAPTER OF THE AMERICAN RED CROSS**

For and in consideration of the mutual promises and agreements contained herein, the City of Rapid City, a municipal corporation, hereinafter referred to as the "City," of 300 Sixth Street, Rapid City, SD 57701, agrees to lease to the Black Hills Area Chapter of the American National Red Cross, a federally chartered instrumentality of the United States of America, hereinafter referred to as the "Red Cross," of 1221 N Maple Ave., Rapid City, SD 57701, the real property described below subject to the following terms and conditions:

1. Property. The City hereby leases to the Red Cross the real property legally described as:

**Tract A of Lot C and of Lot S-1, all in Marshall Heights Tract, located
in the SE¹/₄ of the SE¹/₄ of Section 25, Township 2 North, Range 7 East
of the Black Hills Meridian, Pennington County, South Dakota.**

commonly known as 1221 North Maple Avenue, as shown on Exhibit "A" attached hereto and incorporated herein by this reference. Red Cross shall be entitled to exclusive possession of the property, which shall be hereinafter referred to as the "leased premises."

2. Term. The term of this Lease Agreement shall begin on March 18, 2011, and shall end on March 17, 2031. This Lease may be terminated by either party giving notice of its intent to terminate said lease with ninety (90) days notice.

3. Consideration. Red Cross agrees to pay the City One Dollar (\$1) rent per year. 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. Use. Red Cross shall have use of the leased premises during the term hereof, subject to the terms of this Lease Agreement, for the purpose of housing office space, storage, staging, preparation for response and all other uses appurtenant to its mission. Red Cross shall make no use of the property and/or facilities inconsistent with such mission, and Red Cross shall comply with all federal, state, and local laws and regulations in carrying out said use. Red Cross shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device, with exception of fuel contained within vehicle fuel tanks.

5. Maintenance. All maintenance of the leased premises shall be provided by Red Cross including but not limited to keeping all grounds, sidewalks, trees, shrubbery, buildings, and all other structures in an attractive, safe, and repaired condition. Red Cross shall be responsible for all infrastructure maintenance and upkeep, including but not limited to fixtures, utilities service lines, HVAC systems, and building repairs.

6. 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 City. Any permanent improvements or fixtures constructed by Red Cross on the leased premises shall be considered the property of the City.

7. Utilities. Red Cross agrees to pay for all of its own utilities, including but not limited to electricity, gas, water, sewer, telephone, cable, and internet.

8. Public Accounting. Red Cross will make available for inspection its IRS Form 990 and financial statements on its public website, www.redcross.org.

9. Termination. The City shall have the option of terminating this Lease Agreement immediately if any of the following instances of default occur:

- a. Red Cross abandons the premises;
- b. Red Cross dissolves or is administratively dissolved;
- c. Red Cross enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise;
- d. The character of Red Cross's operation changes significantly from that of a nonprofit organized to provide neutral humanitarian care to the victims of war and emergency response to the victims of natural disasters; or
- e. Red Cross 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 Agreement, such termination will be effective upon mailing of written notice to Red Cross, at which time Red Cross shall have no further rights under this Lease.

10. Surrender of Premises. Red Cross agrees to surrender and vacate the leased premises upon termination of this Lease Agreement.

11. Liability. Red Cross 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 Red Cross in the occupation or use of the leased premises by Red Cross, its officers, directors, agents and/or employees.

Red Cross agrees to purchase and maintain commercial general liability insurance for each occurrence of injury or property damage in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence. The City shall be named an additional insured in said policy and Red Cross shall annually furnish to the City evidence of insurance by a certificate of insurance of required coverage. Notwithstanding any provision herein to the contrary, if Red Cross shall fail to secure said insurance, if said insurance shall lapse, or if any other default of this Section occurs, Red Cross shall have fifteen (15) days to cure said default

12. Assignment and Subletting. This Lease shall not be assigned nor shall the leased premises be sublet by Red Cross except upon written consent and approval of the City.

13. 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 Area Chapter
American Red Cross
Attn: Executive Director
1221 N Maple Ave
Rapid City, SD 57701

14. Change of Contacts. Red Cross agrees to notify City of any changes in its point of contact or the address of business correspondence, within thirty (30) days after said change.

15. Condition of Premises; No Warranties; Release. The taking of possession of the leased premises by the Red Cross shall be conclusive evidence that the Red Cross (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 Red Cross 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 Red Cross hereby releases the City, for injury or damage which may be sustained by Red Cross, 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 Red Cross's officers, directors, agents or employees. Nothing contained in this Lease is intended to create a partnership or joint venture between the Red Cross and the City of Rapid City. No agent of Red Cross shall be the agent of the City, and Red Cross 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. Red Cross 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. Red Cross further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

18. Time of Essence. Time is of the essence of this Lease Agreement.

19. 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.

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

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

22. 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.

23. 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.

24. 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.

25. 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.

[Signature pages follow]

DATED this _____ day of _____, 2011.

**BLACK HILLS AREA CHAPTER
AMERICAN RED CROSS**

By _____
Its Chairman of the Board of Directors

ATTEST

Secretary

(seal)

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

On this the ____ day of _____, 2011 before me, the undersigned officer, personally appeared _____ and _____, who acknowledged themselves to be the Chairman and Secretary of the Board of Directors of the Black Hills Area Chapter of the American National Red Cross, and that they, as such Chairman and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the organization by themselves as Chairman and Secretary.

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

(seal)

Notary Public - South Dakota
My Commission Expires _____

DATED this _____ day of _____, 2011.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

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

On this the _____ day of _____, 2011 before me, the undersigned officer, personally appeared Alan Hanks 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 _____