

**LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND  
BLACK HILLS AREA HABITAT FOR HUMANITY**

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 Black Hills Area Habitat for Humanity, a South Dakota non-profit corporation d/b/a the Habitat ReStore Construction Salvage Center (CSC), hereinafter referred to as the "Habitat ReStore," of 401 11<sup>th</sup> Street, Rapid City, South Dakota 57701, the real property described below subject to the following terms and conditions:

1. Property. The City hereby leases to Habitat ReStore the real property legally described as:

**A portion of Tract A of the Wasteland Subdivision, located in Section 19,  
T1N, R8E, B.H.M., Rapid City, Pennington County, South Dakota**

The property includes the building known as 5535 S. Hwy 79, which is located on the north side of the City landfill's entrance. A more precise description of the property is shown on Exhibit "A" attached hereto and incorporated herein by this reference. The portion of the property leased to the Habitat ReStore 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 September 30, 2012. This Lease may be terminated by either party giving notice of its intent to terminate said lease with sixty (60) days notice.

3. Renewal. Upon expiration of the initial term, this Lease shall automatically renew for an additional one-year term. The Lease shall automatically renew two additional times for one-year terms, for a total of three additional one-year terms. Either party shall have the option to not renew this Lease at the expiration of the initial term or any additional one-year term by notifying the the other party in writing at least thirty (30) days prior to the expiration of the then-current term.

4. Consideration. Habitat ReStore agrees to pay the City One Dollar (\$1) rent for the initial term and One Dollar (\$1) per year for each renewal 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.

5. Possession. Habitat ReStore shall be entitled to possession of the property upon execution of this Lease by both parties. The City shall retain possession of the greater landfill premises, and shall retain the right to set the dates, hours, and times at which the landfill and the leased premises are open to the public.

6. Use. Habitat ReStore 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 trash diversion program (ReUse Center) at the City's landfill. Habitat ReStore shall make no use of the property and/or facilities inconsistent with such use, and Habitat ReStore shall comply with all federal, state, and local laws and regulations in carrying out said use. Habitat ReStore 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.

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

8. Landfill Entrance. Habitat ReStore enters this Lease with the knowledge and understanding that the current landfill entrance access to the leased premises is subject to change with reconstruction. It is anticipated that any new access to the leased premises will be relocated to a mutually agreeable location.

9. Keys. Habitat ReStore will make available to the Public Works Director or his/her designee a set of keys and alarm codes, if any, for all entrances. These keys will be used for inspection and emergency purposes only, and the Public Works Department will notify Habitat ReStore before entering the leased premises unless exigent circumstances exist.

10. 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 Habitat ReStore on the leased premises shall be considered the property of the City.

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

- a. Habitat ReStore abandons the premises;
- b. Habitat ReStore dissolves or is administratively dissolved;
- c. Habitat ReStore enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise;
- d. The character of Habitat ReStore's operation changes significantly from that of a nonprofit organization; or
- e. Habitat ReStore 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 Habitat ReStore, at which time Habitat ReStore shall have no further rights under this Lease.

12. Memorandum of Understanding. City and Habitat ReStore hereby terminate that certain Memorandum of Understanding Between the City of Rapid City and the Black Hills Area Habitat for Humanity for Operation of a ReUse Center (Construction Salvage Center) at the City Landfill (the “MOU”), entered March 1, 2010.

13. Surrender of Premises. Habitat ReStore agrees to surrender and vacate the leased premises upon termination of this Lease Agreement.

14. ReStore Responsibilities. The Habitat ReStore agrees to provide, at its own expense, a trailer and portable toilet for use by the Habitat ReStore in running the trash diversion program. The Habitat ReStore will provide all necessary personnel to staff the diversion program. The diversion program will maintain the same hours as the City landfill. Suitable items can be dropped off at the diversion point where Habitat ReStore staff will be able to sort and process them. It is anticipated that the diversion program will be staffed by two, three quarter time, site supervisors and additional volunteer staff. The site will be used for drop off and processing of materials only. Once separated and/or processed, all goods collected will be transported for sale or distribution off-site.

The site supervisors will report to the Habitat ReStore manager who will be responsible for overall management of the diversion program. The Habitat ReStore manager will oversee operations, transport of items to the Habitat ReStore, all financial operations, including, but not limited to, accounts payable and receivable and all other business functions. The Habitat ReStore manager will develop written operation procedures, including record keeping policies and formats. The volume of items diverted through the CSC program will be available to the City upon request

The Habitat ReStore will be responsible for forming an advisory committee to ensure proper operation of the program. The committee will meet on at least a quarterly basis and will be responsible for reviewing operating procedures, and diversion amounts. The committee will also be responsible for recommending any changes or additions to the project it deems appropriate. At least one representative from the City will be a member of the advisory committee.

15. City Responsibilities. The City will provide, at its own expense, electric utility to trailer and cold storage facility, as well as work-release laborers as deemed necessary by Habitat ReStore manager. The obligation of the City to provide work-release laborers will be subject to their availability. Further, City will also provide bins where metals, plastics and glass which cannot be reused can be separated for recycling. The City will, at its own expense, be responsible for emptying and maintaining the bins.

The City will also work in good faith with the Habitat ReStore to help market this project and generally increase public awareness about its availability. The understanding being that the City will include information about this diversion program wherever feasible, not to exclude on monthly water/garbage invoices, in any printed material about the land-fill, the Rapid City web-site, and any related press releases.

16. Insurance. The Habitat ReStore will maintain insurance to cover the diversion site operation. The minimum amount of insurance coverage shall be:

Comprehensive General Liability  
(Including Contractual Liability  
and Completed Operations)

|                                   |                             |
|-----------------------------------|-----------------------------|
| Bodily Injury and Property Damage | \$2,000,000 each occurrence |
| General Aggregate                 | \$2,000,000                 |

The City should be named as an additional insured on the policy covering the diversion program. The Habitat ReStore shall provide the City with proof of insurance coverage meeting the minimum standards of this paragraph prior to starting operations at the City landfill.

17. Agreement Subject to Appropriation. If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this Agreement, this Agreement shall impose no obligation on the City for payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Habitat ReStore, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

18. Liability. Habitat ReStore 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 Habitat ReStore in the occupation or use of the leased premises by Habitat ReStore, its officers, directors, agents and/or employees.

19. Assignment and Subletting. This Lease shall not be assigned nor shall the leased premises be sublet by Habitat ReStore except upon written consent and approval of the City.

20. 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: Public Works Director  
300 Sixth Street  
Rapid City, SD 57701

Black Hills Area  
Habitat for Humanity  
Attn: Executive Director  
610 E. Omaha Street  
Rapid City, SD 57701

21. Change of Contacts. Habitat ReStore agrees to notify the Public Works Director of any changes in its point of contact or the address of business correspondence, within fifteen (15) days after said change.

22. Condition of Premises; No Warranties; Release. The taking of possession of the leased premises by the Habitat ReStore shall be conclusive evidence that the Habitat ReStore (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 Habitat ReStore 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 Habitat ReStore hereby releases the City, for injury or damage which may be sustained by Habitat ReStore, or any invitee or their property, caused by or resulting from the state of repair of the premises.

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

24. Non-Discrimination. Habitat ReStore 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. Habitat ReStore further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

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

26. Enforceability. 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.

27. 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.

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

29. Binding Effect. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

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

31. 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.

32. 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.

33. 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.

34. Construction. This agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

35. Jurisdiction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to any conflict of laws provision. 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.

**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 \_\_\_\_\_

**BLACK HILLS AREA HABITAT FOR HUMANITY RESTORE**

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

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

On this the \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged him/herself to be the \_\_\_\_\_ of the Black Hills Area Habitat for Humanity ReStore 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 \_\_\_\_\_