

## **LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE PENNINGTON COUNTY SHERIFF FOR 108 EAST MAIN STREET**

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 PENNINGTON COUNTY SHERIFF, hereinafter referred to as "Sheriff" of 300 Kansas City Street, Rapid City, SD 57701, the leased premises described herein subject to the following terms and conditions:

1. Leased Premises. The City hereby leases to the Sheriff a portion of the property legally described as:

### **Ulland Outlot Revised, Rapid City, Pennington County, South Dakota**

commonly known as 108 East Main Street, more particularly shown on Exhibit "A" attached hereto and incorporated herein by this reference.

2. Term. The term of this Lease Agreement shall commence on the date of occupancy of the Leased Premises by the Sheriff following completion of the Tenant Improvements described in Paragraph 13 of this Lease Agreement in substantial compliance with the plans as prepared by Fennel Design, Inc., and shall continue for a period of seven (7) years thereafter, unless sooner terminated as provided herein. The Sheriff agrees to use reasonable diligence to attempt to complete the Tenant Improvements on or before October 1, 2012, and achieve substantial compliance with the Plans.

- a. When the Tenant Improvements are substantially completed, the Sheriff shall give written notice of such fact to City, who may inspect the work and notify the Sheriff in writing of any deficiencies in construction.
- b. On rectification of any deficiencies, the Sheriff shall further give notice of completion and City shall verify such completion within five (5) days of the notice.
- c. Upon such verification, the Sheriff shall take occupancy of the Leased Premises within twenty (20) days, and the Sheriff agrees to provide City a written certification of the date it takes occupancy.

3. Option to Renew. The Sheriff is hereby given an option to renew this Lease Agreement for an additional term of two (2) years by giving City written notice on or before ninety (90) days prior to the expiration of the primary term of this Lease Agreement. The renewal lease is to be upon the same terms, covenants, and conditions contained in this Lease Agreement.

4. Rent. The Sheriff shall pay to City monthly rent installments of One Thousand Dollars (\$1,000.00). Lease payments shall be made to the City Finance Office at 300 Sixth Street, Rapid City, SD 57701. The first monthly rent installment shall be due on the date of occupancy, and it shall be pro-rated on the basis of the number of calendar days of the month within which occupancy begins.

5. Adjustment of Rent. The parties agree that on or before April 1, 2014, they shall renegotiate the amount of rent due. The parties agree that any rent increase will be based solely on the building operating costs, as shown by utilities and maintenance costs incurred from the effective date of this Lease through the time of negotiation. The parties may agree to any rental rate structure for the remaining term. Any adjustment of rent shall be written and signed by both parties.

6. Possession. The Sheriff shall be entitled to possession of the Leased Premises as described above, and shall yield possession to City on the last day of the term of this Lease Agreement, unless otherwise agreed by both parties in writing. At the expiration of the term, the Sheriff shall remove its effects and yield possession of the Leased Premises to City in as good a condition as when the Sheriff's occupancy began, ordinary wear and tear excepted.

7. Use. The Sheriff shall have use of the property and facilities during the lease period, subject to the terms of this Lease Agreement, for the purpose of operating the Pennington County Sheriff's 24-7 Sobriety Program. The Sheriff shall make no use of the property and/or facilities inconsistent with such purpose, and the Sheriff shall comply with all federal, state, and local laws and regulations in carrying out said use.

8. Repairs and Maintenance. City agrees that it shall, at its cost and expense, maintain the parking area, the parcel on which the premises are located, the building in which the premises are located, and the premises, and every part of them, in good condition, except that the Sheriff shall make any repairs or replacements necessitated by damage caused by the Sheriff or its employees, officers, agents, invitees, or visitors. Provided, however, if the Sheriff fails to make any such repairs or replacements promptly, City may, at its sole option, make the repairs or replacements after at least fourteen (14) days prior written notice to the Sheriff, and the Sheriff shall repay the cost of the repairs or replacements to City on demand. The Sheriff shall be responsible for snow removal on the leased premises.

9. Utilities. City agrees to provide, at its expense, to or for the premises, adequate heat, electricity, water, sewer, air conditioning, and trash removal service, in such quantities and at such times as is necessary to the Sheriff's comfortable and reasonable use of the premises. The Sheriff agrees to provide, at its expense, all janitorial services, telephone service, cable, and internet or other data services.

In the event of any interruption or malfunction for any reason of any utility or service to the premises or building, City shall use reasonable diligence to restore the utility or service. However, any such interruption or malfunction, if restored within a reasonable time, shall not entitle the Sheriff to be relieved from any of its obligations under this Lease, or grant the Sheriff the right of set-off or recoupment of rent, or be considered a breach by City, or entitle the Sheriff to

any damages. Should any of the equipment or systems break down, or for any cause beyond the reasonable control of City cease to function properly, City shall use reasonable diligence to repair the machinery or system promptly, but the Sheriff shall have no claim for rebate of rent or damages on account of any interruptions in service occasioned by or resulting from any such breakdown or cessation for the length of time reasonably required for repair.

10. Inspection. the Sheriff agrees to permit City and its authorized representatives to enter the Leased Premises at all reasonable times during usual business hours for the purpose of inspection, or for the making of any necessary repairs for which the City is responsible or feels necessary for the safety and preservation of the Leased Premises or for the performance of any work on the premises that may be necessary to comply with any laws or regulations of any public authority.

11. Fixtures and Personal Property. Any trade fixtures, equipment, or other personal property used to carry on the trade for which the premises is used by the Sheriff, which is permanently installed in or permanently attached to the premises, building, or parcel by or at the expense of the Sheriff, shall be and remain the property of the Sheriff. City agrees that the Sheriff shall have the right to remove any and all of such property prior to the expiration or termination of this Lease Agreement, so long as no default exists under this Lease. The Sheriff agrees that it will, at its expense, repair any damage occasioned to the premises by reason of the removal of any of its trade fixtures, equipment, or other permanently affixed personal property as described above.

12. Construction Approval. Construction and other new improvements at the premises shall be in conformity with the regulatory codes of the City and subject to the approval of the Fire Chief or his designee. Any denial by the Fire Chief may be appealed to the Common Council. Any permanent improvements or fixtures, other than trade fixtures, constructed by the Sheriff on the leased premises shall be considered the property of the City.

13. Tenant Improvements. The parties agree that the Sheriff will undertake certain improvements to the leased premises in order to make it suitable for its uses described in Paragraph 5 above. A description of the improvements is attached hereto as Exhibit B and incorporated herein by this reference.

14. Early Termination. This Lease Agreement shall be subject to early termination during the term hereof as follows:

- a. By the City if the Sheriff abandons the use of the premises;
- b. By the City following a default by the Sheriff of any provision of this Lease Agreement and such default remains uncured for more than sixty (60) days after written notice thereof;
- c. By the City, at its option, upon one hundred eighty (180) days' notice to Sheriff;

- d. By the Sheriff following a default by City of any provision of this Lease Agreement, and such default remains uncured for more than sixty (60) days after written notice thereof; or
- e. By the Sheriff, at its option, upon one hundred eighty (180) days' notice to City.

Should either party choose to exercise its option to terminate this Lease Agreement under this paragraph, such termination will be effective upon mailing of written notice to the other party.

15. Early Termination by City. Should City exercise its option under subsection 14 c. above so as to cause this Lease to terminate prior to October 1, 2018, the City agrees to pay the Sheriff Four Hundred Sixty-three Dollars (\$463.00) for each month remaining in the initial and optional terms of this Lease. Should the City exercise its option under subsection 14 c. above so as to cause this Lease to terminate on or after October 1, 2018, the City agrees to pay the Sheriff Two Hundred Thirty-one Dollars (\$231.00) for each month remaining in the initial and optional terms. The parties agree that this payment is an equitable adjustment for the Sheriff's investment and improvements to the leased premises, and upon the payment of this adjustment, the City shall have no further liability for early termination of this Lease.

16. Surrender of Premises. The Sheriff agrees to surrender and vacate the premises at the termination of this Lease.

17. Liability. The Sheriff agrees that City shall not be liable for any damage or injury to persons or property arising out of the use of the leased premises by the Sheriff, its officers, agents employees, invitees, or visitors except that occasioned by the negligence or act of City, its agents, employees, servants, contractors, or subcontractors.

- a. The Sheriff will indemnify, defend and save City harmless from all liability and loss on account of any such damage or injury; with the exception of any damage or injury occasioned by any failure of City to comply with its obligations under this Lease Agreement or by reason of the negligence of the City, its agents, servants, employees, contractors, or subcontractors.
- b. The Sheriff shall furnish to City a certificate of liability insurance, and a certificate of renewal of such insurance from time to time throughout the term of this Lease Agreement, insuring the Sheriff against liability for personal injury in the amount of at least \$1,000,000 per person or \$2,000,000 per accident, and against liability for property damage in the amount of \$1,000,000 per occurrence.

In addition, City agrees to indemnify, defend and save the Sheriff harmless from all liability and loss on account of any damage or injury occasioned by the failure of City to comply with its obligations under this Lease Agreement or by reason of the negligence of the City, its agents, servants, or employees.

18. Assignment and Subletting. This Lease shall not be assigned nor premises sublet by the Sheriff except upon written consent and approval of the City Council.

19. Parking. City agrees to provide adequate parking for use by the Sheriff.

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:

Fire Chief  
10 Main Street  
Rapid City, SD 57701

Pennington County Sheriff  
300 Kansas City Street  
Rapid City, SD 57701

21. Condition of Premises; No Warranties; Release. The taking of possession of the premises by the Sheriff shall be conclusive evidence that the Sheriff (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 Sheriff acknowledges that it is entering into this Lease without relying upon any such statement or representation or warranty.

22. Hazards. The Sheriff shall not use the Premises, nor permit them to be used, for any purpose which shall increase the existing rate of insurance upon the building, or cause the cancellation of any insurance policy covering the building, or sell or permit to be kept, used, or sold in or about the premises, any article that may be prohibited by City's insurance policies. The Sheriff shall not commit any waste upon the Leased Premises, nor cause any public or private nuisance or other act that may disturb the quiet enjoyment of City or of any other tenant, nor shall Lessee allow the Leased Premises to be used for any improper, immoral, unlawful, or unsafe purpose, including, but not limited to, the storage of any flammable materials.

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

24. 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.

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

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

27. Counterparts. This Lease 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 Lease Agreement.

28. Severability. If any provision of this Lease Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Lease Agreement, which shall remain in full force and effect.

29. Headings. The headings and numbering of the different paragraphs of this Lease Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

30. Construction and Venue. This Lease Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation relating to this Lease Agreement shall be resolved only in the Seventh Judicial Circuit Court of Pennington County, South Dakota.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF RAPID CITY**

ATTEST

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Finance Officer

(seal)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**PENNINGTON COUNTY SHERIFF**

\_\_\_\_\_  
Kevin Thom, Sheriff

