

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY AND RAPID CITY PROFESSIONAL HOCKEY, LLC

This agreement dated the 3rd day of January, 2008, is by and between The City of Rapid City (herein after referred to as "City") and Rapid City Professional Hockey, LLC of 444 Mount Rushmore Road North, Rapid City, SD 57701 (herein after referred to as "Hockey Team").

1. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions upon which Hockey Team will provide any and all necessary funds required for the additional seating planned for the Rushmore Plaza Civic Center Addition a/k/a Hockey Arena. Said seating is in addition to the seating already planned and funded for by the City.

2. ANTICIPATED EXPENDITURES TO BE PAID BY HOCKEY TEAM.

Hockey Team shall pay for the following as it relates to the additional seating:

- All required consulting and design work
- Additional charges/change orders by the building/expansion Contractor necessary to implement the design changes

3. PAYMENT TERMS.

Hockey Team shall pay in advance, to the City, for all expenses related to the seating expansion. Said payment shall be made to the City prior to City approving change order which obligates the City to expend additional funds.

3.1 Pre-Construction Approval. The ultimate decision to construct the additional seating, once design work is completed, shall be that of the Hockey Team. Should the projected costs exceed what Hockey Team is willing to expend, Hockey Team shall not be required to pay for the additional seating and only the costs associated with the design work for said seating.

4. NOTICES.

All notices or demands given or required to be given hereunder shall be in writing and sent by United States Certified Mail, postage prepaid, addressed as follows:

To City: City of Rapid City
 300 6th Street
 Rapid City, SD 57701

To Hockey Team: Rapid City Professional Hockey, LLC
 444 Mount Rushmore Road North
 Rapid City, SD 57701

provided that either party by written notice may designate a change of address or other instructions by Seller/Landlord pertinent to payment of lease payments.

5. ADMINISTRATION AND CONSTRUCTION. This Agreement shall be administered and construed in accordance with the following provisions:

5.1 Captions. The captions on the paragraphs and subparagraphs of this Agreement are inserted only for the purpose of convenient reference. The captions shall not be used to construe or interpret the Agreement nor to prescribe the scope or intent of the Agreement.

5.2 Non-waiver of Breach. The waiver by any party of a breach of any provision in this Agreement shall not operate or be construed as a waiver of any subsequent breach.

5.3 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

5.4 Entire Agreement. This Agreement constitutes the complete and entire understanding of the parties concerning the additional seating. Neither party shall be bound by or be liable for any statements, warranties, guarantees, or representations not set forth in this Agreement which may have been made by any broker, agent, employee or other person representing or purporting to represent a party to this Agreement.

5.5 Modification. No changes or modification of this Agreement shall be valid unless the same is in writing and signed by all of the parties to this Agreement.

5.6 Counterparts. This agreement may be executed in any one or more counterparts, each of which shall be deemed to be an original instrument, but all of which together shall constitute but one instrument.

5.7 Persons Bound by this Agreement. This Agreement and all provisions, covenants and conditions thereof shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

5.8 Remedies Cumulative. All remedies provided in this Agreement are distinct and cumulative to any other right or remedy under this Agreement or afforded by law or equity, and may be exercised concurrently, independently or successively.

6. RISK OF LOSS. City shall cause the additional seating to be covered under any and all insurance policies City may now have procured or will procure in the future. Under no circumstances shall Hockey Team be liable for any action involving the additional seating other than the funding for the same.

7. **REFERENCES IN WORDING.** Plural references made to the parties involved in this Agreement may also be singular, and single references may be plural. These references may also apply to heirs, executors, administrators, successors as the case may be.
8. **TIME OF PERFORMANCE.** Time is of the essence in this Agreement.
9. **ENTIRE AGREEMENT.** As written, this Agreement constitutes the final, entire agreement between the City and Hockey Team. They have made no further promises of any kind to one another, nor have they reached any other understandings, either written or oral.
10. **ACKNOWLEDGMENT.** The undersigned hereby acknowledge that they have read this Agreement, understand it, agree to it and have been given an executed copy. This Agreement is not to be recorded in the property records unless express permission is granted by the City. The Parties were advised, and had opportunity to, seek advice of legal, tax, technical expertise professionals of their own selection and any other counsel of their choosing concerning this Agreement prior to signing.
11. **CHOICE OF LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of South Dakota and is executed in Pennington County, South Dakota. All parties agree that the venue for any dispute regarding this Agreement shall be Pennington County, South Dakota.

Dated this 3 day of January, 2008.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

RAPID CITY PROFESSIONAL HOCKEY, LLC

Scott Mueller

By: Scott Mueller

Its: manager

Notary Page to Follow.

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, 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 Agreement Consenting to Assessed Project 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: _____

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

On this 3rd day of January, 2008, before me, the undersigned officer, personally appeared Scott Mueller, who acknowledged himself to be the Manager of Rapid City Professional Hockey, LLC, and that 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, State of South Dakota

My Commission Expires: 11/12/10