



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724


## Risk Management

300 Sixth Street  
605-394-6620

### MEMORANDUM

DATE: December 16, 2011

TO: Legal and Finance Committee  
City Council

FROM: Keith L'Esperance  
Risk Management Division 

SUBJECT: Bleacher Rental Contract Revision

Attached is the current bleacher rental contract used when city bleachers are rented by other public and non-profit entities. Please note the strike-outs in red removing the language for "non-refundable" as it relates to the bleacher rental expense, removal of the notary section at the end and insertion in blue #7 additional language as an integration clause recommended by the City Attorney Office.

This past fall, Rapid City Christian High School rented and paid for four sets of bleachers (in advance per the contract) to use during their football and homecoming season until the bleacher units they purchased were built and delivered. RC Christian ended up only needing three of the City's units but had paid for four. Because of the contract language, I was unable to refund them the overpayment for the fourth unit they did not use.

The rental fees basically cover the City's costs which include moving and retrieval, when applicable, and maintenance and wear and tear. The City is not in the business to make money on bleacher rentals. Therefore, as the administrator of the bleacher rental program, I am requesting the Legal and Finance Committee and the City Council to revise the bleacher rental contract and approve the recommended language changes. This will allow for refunds in situations such as was experienced by RC Christian.

Thank you.

Attachment



EQUAL OPPORTUNITY EMPLOYER

**TRAILER MOUNTED HYDRAULIC MOBILE BLEACHER  
SYSTEM APPLICATION AND AGREEMENT**

**APPLICATION FEES ARE NON-REFUNDABLE**

The City of Rapid City has available eight 234 seat capacity mobile bleacher units for lease within city limits to governmental entities and non-profit organizations. The City will transport, setup, and takedown the leased units. Priority will be given first to the City of Rapid City, next to the Rapid City School District, and then will be on a first come first serve basis based on the date the application is received by the City. The City must receive the application, agreement, certificate of insurance, deposit and payment at least 30 days prior to the event, but not more than 365 days prior to the event.

The area in which the bleacher units will be setup must be smooth and level and the ground must be dense enough to support the 9400 pound units. An open area approximately 22 feet deep and longer than the 39 foot bleacher units must be available to allow for pedestrian traffic. Additionally, approximately 15 feet of open area is needed to the side of the trailer, and at least 16 feet of overhead clearance is needed. Also, the area above the bleachers must be free from electric power lines or other obstructions that might cause a problem or be hazardous. The City reserves the right to decline an application due to the site not meeting the above-described conditions or due to any other reason that makes the transport, setup, use, or takedown unsafe including but not limited to weather conditions.

A \$150.00 setup/takedown fee **(non-refundable)** per unit will apply. A \$50.00 extended use fee **(non-refundable)** will apply per unit per day for use over five days. In the event that special permission is granted by the Rapid City Common Council for use of the bleachers outside the city limits, an additional fee (non-refundable) based per mile will apply. Additionally, a \$500.00 cash or money order damage deposit per unit must be received by the City before delivery of the bleachers. The above-described fees and deposit are not applicable to the City of Rapid City or the Rapid City School District.

**APPLICATION**

Date: \_\_\_\_\_

Name of governmental entity or non-profit organization:

\_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact person: \_\_\_\_\_

Please describe the event:

\_\_\_\_\_

\_\_\_\_\_

Please describe the area the unit(s) will be setup: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date and time of event: \_\_\_\_\_

Number of unit(s) being requested: \_\_\_\_\_

Certification of Insurance provided: \$2,000,000 Combined Single Limit Per Occurrence  
and \$2,000,000 General Aggregate

Units will be provided by the -Parks Department; -Civic Center

Release of Deposit was authorized by -Parks Department; -Civic Center on the \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_. Initial \_\_\_\_\_

### AGREEMENT

This lease of \_\_\_\_\_ bleacher unit(s), made this \_\_\_\_\_ day of \_\_\_\_\_, by and between the  
City of Rapid City, hereinafter referred to as "Lessor," and \_\_\_\_\_, hereinafter  
referred to as "Lessee,"

Witnesseth:

1. That Lessor hereby leases to Lessee, and Lessee leases from Lessor, subject to the terms  
and conditions herein set forth, the following, hereinafter referred to as the "Property": \_\_\_\_\_  
bleacher units.

2. Lessee hereby acknowledges delivery and acceptance of the aforesaid Property upon the  
terms and conditions of this lease.

3. The term of this lease is \_\_\_\_\_ days, beginning \_\_\_\_\_ and ending \_\_\_\_\_.

4. In consideration of said lease, Lessee covenants and agrees as follows:

(a) To pay to Lessor for the setup/takedown of said Property, \_\_\_\_\_ dollars  
(\$\_\_\_\_\_). {\$150 per unit – **Non-Refundable**}

(b) To pay to Lessor for the damage deposit of said Property, \_\_\_\_\_  
dollars (\$\_\_\_\_\_). {\$500 per unit - cash or money order only}

(c) To pay to Lessor for the extended use of said Property, \_\_\_\_\_ dollars  
(\$\_\_\_\_\_). {\$50 per day per unit – **Non-Refundable**}

(d) To safely keep and carefully use the Property and not sell or attempt to sell, remove  
or attempt to remove, the same or any part thereof.

(e) Lessee shall, during the term of this lease and until return of the Property to Lessor,  
abide by and conform to, and cause others to abide by and conform to, all laws and



governmental rules and regulations, including any future amendments thereto, controlling or in any manner affecting operation, use or occupancy of said Property.

(f) Lessee accepts the Property in its present condition, and during the term of this lease and until return of the Property to Lessor the Lessee shall maintain it in its present condition, excluding reasonable wear and tear, and shall be responsible to pay for any needed repair to said Property caused by operation or use by Lessee or by others during the term of this lease and until return of the Property to Lessor.

(g) Lessee shall be responsible and liable for, and indemnify, defend, and hold Lessor free and harmless from any claim or claims of any kind whatsoever for or from, and promptly pay any judgment for, any and all liability for, bodily injury, death or property damage, or any of them, which arise or in any manner are occasioned by the acts or negligence of Lessee or others in the custody, operation or use of, or with respect to, said Property, during the term of this lease or until return of the Property to Lessor.

(h) Lessee will provide a certificate of insurance for Commercial General Liability insurance for the entire term of the Lease. The limit of liability must be in the amount of Lessee's Commercial General Liability coverage carried, but in no event, will be less than \$2,000,000 Combined Single Limit Per Occurrence and \$2,000,000 General Aggregate. Lessee shall name the City of Rapid City as an additional insured and provide an acceptable certificate of insurance to the City of Rapid City prior to taking possession of the Property. The certificate must show the following wording in the "Description of Operations" section of the Certificate of Insurance: "For Lease of Trailer Mounted Hydraulic Mobile Bleachers". The City's failure to obtain from Lessee a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements.

(i) Lessee shall return, at the expiration of the term herein granted, the whole of said Property to the Lessor in as good condition as the same is, reasonable wear and tear excepted.

(j) It is mutually agreed that in case Lessee shall violate any of the aforesaid covenants, terms and conditions Lessor may at its option without notice terminate this lease and take possession of said Property wherever found.

5. The parties hereby agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

6. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

7. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Agreement may only be amended by a written document duly executed by all parties.

