

**LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND RAPID CITY HIGH SCHOOL BASEBALL, INC.**

For and in consideration of the mutual promises and agreements contained herein, the City of Rapid City (City), a municipal corporation, agrees to lease to Rapid City High School Baseball, Inc. (Lessee), organized under the laws of the State of South Dakota, a specified area to operate a youth baseball program, subject to the following terms and conditions:

1. Consideration. The City hereby leases to Lessee the below described premises for the sum of One Dollar (\$1.00) per year and other good and valuable consideration, including but not limited to, maintenance of general grounds, construction of incidental improvements, administration of youth baseball program open to the citizens of the City, responsibility for mowing of the fields, and responsibility for all electrical bills. Said sum is payable to the City of Rapid City on or before the first day of January of each succeeding year.

2. Term. The term of this agreement is from January 1, 2013, to December 31, 2017. This lease may be terminated by either party giving notice of its intent to terminate said lease on or before October 15th of any year, which termination will be effective as of January 1st immediately following unless otherwise stated.

3. Premises. The premises leased by the City to Lessee are described on Exhibits "A" and "B" attached hereto and incorporated herein by reference.

4. Surrender of Premises. Lessee agrees to surrender the premises, or a part thereof, in the event it is necessary for expansion or utilization of public park facilities or for any other purpose which City believes is necessary or important, and

they further agree to abandon the premises, or a part thereof, in the event the demand is made by the United States government. Lessee further agrees to abandon the premises, or a part thereof, whenever ordered to do so by a court of law or whenever the City is ordered to terminate said agreement by an order of any court.

5. Use. Lessee shall have priority use of the premises during the lease period, subject to the terms of this lease, for the purpose of operating a youth baseball program. Lessee agrees that the City may use the premises when the same is not required for use by Lessee, and such use by the City shall be consistent with the normal usage of said premises.

6. Use by Others. Lessee agrees to allow other persons or organizations to use the premises, subject to the reasonable terms and conditions. City and Lessee agree that Lessee will have the opportunity to review proposals for activities at the facility at least one year in advance, or before the schedule for the following season is complete. If other persons or organizations use the premises, Lessee may be compensated for use of the facility and/or offered the opportunity to work on the event and earn compensation for their program. Both parties agree that Lessee or its designee shall participate in the local organizing committee that is charged with reviewing and fully considering any proposals for use of the facilities by others.

7. Water Provisions: Due to the high cost of maintenance and repair to irrigation systems, beginning in 2013 the Rapid City Department of Parks and Recreation will be responsible for turning water on at the beginning of the season, and turning water off at the end of the season. Allow up to 30 days from the date of the

request for water service to be provided. Exact dates for provision of water services will be determined solely by the Parks and Recreation Director or his/her designee.

To assist in the promotion of good water conservation practices, the Lessee agrees to assume all costs to connect to and utilize the City's proposed central irrigation control system, in cooperation with the City and in conformance with City specifications. Connections shall be made by December 31, 2014 unless an exception is granted by the City Council.

8. **Maintenance.** Lessee agrees to maintain said premises under the authority of the Parks and Recreation Director or his/her designee. Lessee agrees to repair or replace any property damaged by its members or invitees which occurs while the premises are in use by Lessee. Lessee agrees to be responsible for policing the premises and to pick up and make ready for city collection of all trash, recyclables, debris, and waste material of every nature (including mowing of weeds), resulting from the use of the premises by itself or any spectators in attendance at such premises. Lessee agrees to provide trash and recycling receptacles for use at the premises. Lessee agrees to be responsible for the preparation of the playing fields prior to all scheduled game days. Lessee also agrees to place all collected trash, recyclables, debris, and waste in a designated location for removal by the City of Rapid City. Lessee agrees to promote and encourage recycling throughout the premises.

The City of Rapid City, at its own expense, agrees to provide unique or unusual maintenance and routine maintenance to the infrastructure, including but not limited to, repair of broken water mains, sewer, storm sewer and all repairs and surface maintenance of parking lots. The City of Rapid City agrees to provide water to the

premises for the purpose of watering the playing field grass. The City specifically reserves the right to restrict water usage under this agreement if water restrictions are placed on other water users within the City.

9. Mowing. Lessee shall mow the playing fields on a substantially weekly basis during the season. The Parks Division Manager can mow the fields and charge Lessee at the rate of twenty-five dollars (\$25.00) per hour for each man and machine used, provided that the Parks Division Manager: (1) determines the need for mowing; (2) gives Lessee three (3) days notice of his intent to do so if Lessee fails to mow; and (3) determines he has the available manpower and equipment. Should the Parks Division Manager not have the available manpower and equipment, he can arrange for a private contractor to mow at the expense of Lessee.

10. Construction. Lessee shall have the right to construct accessory and customarily incidental improvements with prior approval of the plans by the Director of Parks and Recreation or his/her designee. Construction and other improvements at baseball fields located in the flood plain shall be in conformity with the regulatory codes of the City and subject to the prior written approval of the Director of Parks and Recreation or his designee. Any permanent improvements or fixtures constructed by Lessee in the leased area shall be considered the property of the City.

11. Parking. Lessee agrees that it will permit no vehicular parking at the facility, except as may be designated by the Parks Division Manager.

12. Expense. The City of Rapid City shall assume no expenses as a result of this lease or any of the operations of Lessee. Lessee agrees to pay its own administration expenses, including but not limited to, lights and electricity, grounds

crew, office supplies, miscellaneous equipment, and secretarial fees. Lessee agrees that the electric utilities will be metered in the name of and billed directly to Lessee and that all expenses incurred by it shall be paid within thirty (30) days of due date.

13. Public Accounting. Lessee agrees to make a public accounting of its financial transactions within sixty (60) days after the close of its operating year. Such accounting shall be in the form of a report of income and expense and balance sheet of its assets and liabilities, which report shall be available for public inspection at the City Finance Office.

14. Termination. If Lessee shall dissolve or abandon the use of the premises for one season, this lease shall be terminated and Lessee shall have no further rights hereunder.

15. Liability. Lessee agrees that the City shall be held harmless from any and all liability arising from any operation or use under this lease of the described premises by it or its agents or employees or any other person using the premises. Lessee further agrees to defend the City against any and all claims arising from the operation or use under this lease of the described premises by it or its agents or employees or any other person using the premises. Lessee agrees to purchase and maintain bodily injury and property damage insurance for each occurrence of injury or damage in the minimum amount of One Million Dollars (\$1,000,000) with participant's injury liability of at least Five Hundred Thousand Dollars (\$500,000). The City shall be named an additional insured in said policy or policies and the Lessee shall furnish to the City evidence of insurance by a certificate of insurance of required coverage.

16. Assignment or Subletting. This lease shall not be assigned, nor the premises sublet, by Lessee except on written consent and approval of the City.

17. Concession, Advertising, and Naming Rights. Lessee shall have the right to operate concessions for the sale of beverages, food, programs, and other items usually sold in the public parks. Lessee shall have the right to sell advertising space on the inside of the fences enclosing the playing fields and all revenue derived from concessions and advertising shall belong to Lessee. Lessee also agrees to be responsible for cleaning and maintaining the concession area.

The City retains all naming rights for the facilities and premises; the concessions and advertising rights granted herein to Lessee shall not abrogate the City's authority to sell naming rights to the facilities and premises which are the subject of this Lease, and to retain all revenues therefrom.

18. City Authority. All matters pertaining to the terms of this lease shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota.

19. Change of Contacts and Officers. Lessee agrees to notify the Director of Parks and Recreation of any changes in the officers of Lessee within thirty (30) days after said change. Attached to and incorporated by reference into the terms of this agreement are the names and addresses of the current office holders of Lessee.

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

21. Relationship Between the Parties. Lessee is an independent contractor of the City. This Agreement does not create an employment relationship between the City of Rapid City and Lessee or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Lessee and the City of Rapid City. No agent of Lessee shall be the agent of the City, and Lessee 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.

22. Time of Essence. Time is of the essence of this Agreement.

23. 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.

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

25. Entire Agreement. This Agreement, along with any attachments constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

26. 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.

27. 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.

28. 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.

29. 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.

Dated this ____ day of _____, 2013.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss
County of Pennington)

On this the ____ day of _____, 2013, before me, the undersigned officer, personally appeared Sam Kooiker 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

RAPID CITY HIGH SCHOOL BASEBALL, INC.

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the President of Rapid City High School Baseball, Inc., and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing his name as President.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)