

## LOAN AGREEMENT

THIS AGREEMENT, is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Soccer Rapid City, a South Dakota a 501(c)(3) nonprofit corporation with its principal place of business at 1733 East Tallent Street, Rapid City, South Dakota 57703, (hereinafter the "Borrower"), and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, (hereinafter the "City").

### RECITALS

**WHEREAS**, City is the owner of certain real property located generally at 3737 Elk Vale Drive and more particularly described as follows:

S464.64 ft OF SE1/4NW1/4NE1/4; S464.64 ft OF NE1/4NE1/4  
LESS H1; E1/2SW1/4NE1/4; SE1/4NE1/4, SEC 21, T2N, R8E,  
BHM, Rapid City, Pennington County, South Dakota

(hereinafter the "Land"); and

**WHEREAS**, Borrower has secured pledges of donations to build various improvements and amenities to the Land for the development of a soccer complex; and

**WHEREAS**, one such contemplated improvement is the installation of lights on eight of the soccer fields on the Land (hereinafter the "Project"); and

**WHEREAS**, the City desires to assist in facilitating improvements to the Land, such improvements being a benefit to the public and being a benefit to Borrower as lessee of the Land; and

**WHEREAS**, City has appropriated Five Hundred Fifty Thousand dollars (\$550,000.00) to be granted from what's known as the City's Vision Fund towards the cost of the completion of the Project; and

**WHEREAS**, Borrower has requested a loan from the City for an additional Five Hundred Fifty Thousand dollars (\$550,000.00) in order to move forward and complete the Project by the spring of 2016; and

**WHEREAS**, City desires to further assist in facilitating completion of the Project by making the requested loan to Borrower for that purpose; and

**WHEREAS**, But for Borrower's promises to complete the Project and repay the loan, City would not be making a loan to Borrower for the Project; in other words, City has agreed to make such a loan to Borrower in reliance upon Borrower's promise to complete the Project and repay the loan; and

**WHEREAS**, the loan for such improvements shall be repaid by the Borrower from the receipt of pledges from donors; and

**WHEREAS**, the Common Council of the City of Rapid City has recommended approval for a loan to Borrower for the Project in the amount of Five Hundred Fifty Thousand dollars (\$550,000.00) (hereinafter the “Loan”); and

**WHEREAS**, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which Borrower will borrow \$550,000.00 from the City and the terms and conditions under which the improvements will be constructed and the Loan will be repaid.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

**1. Loan and Agreed Interest Rate.** The City shall loan to Borrower and Borrower shall borrow from the City the principal sum of Five Hundred Fifty Thousand dollars (\$550,000.00). Interest shall accrue on the unpaid balance of the principal sum of Five Hundred Fifty Thousand dollars (\$550,000.00) at an annual rate of 3% (hereinafter the “Loan”).

**2. Repayment.** Pursuant to paragraph 6 below, the City shall manage the Project. As such, payments due to Project vendors will be paid directly by the City, and Borrower shall repay the City for the same vendor payments up to the amount of the Loan, to include accrued interest.

Borrower shall repay to the City semiannually from pledge donations received by Borrower. The entire outstanding Loan balance, including accrued interest, shall be due and payable not later than five years from the date of the execution of this Agreement.

**3. Security for Loan Repayment.** The repayment of the Loan shall be secured by pledge agreements which are payable to the Borrower by donors on a periodic basis. Copies of Donor Agreements memorializing such pledges held by Borrower shall be provided to City and shall be incorporated by reference as if fully set forth in this document.

**4. Periodic Reporting Requirement and Additional Security.** It is anticipated that Borrower will obtain additional pledges evidenced by Donor Agreements which pledge receipts are intended to be applied to Project costs. Borrower agrees to report to City semi-annually and in addition upon written request by the City any and all information available about additional pledges, including provision to the City of copies of additional Donor Agreements which shall become additional security under this Agreement upon execution of the same, and are herein incorporated by reference as if fully set forth in this document.

**5. Promissory Note.** The Loan as herein provided shall be evidenced by a Promissory Note in the form shown on the attached Exhibit A. The Promissory Note shall permit prepayment without penalty or premium.

6. **Construction.** The City shall manage the Project, and shall bid and contract for all necessary vendors and services, including but not limited to professional services, contractors, and suppliers. The Project shall be constructed in accordance with all applicable City construction standards, and in accordance with all applicable federal, state, and local laws. The construction of the Project shall follow all bid laws applicable to municipalities.

7. **Cost Variations.** Pursuant to the foregoing Recitals, Five Hundred Fifty Thousand dollars (\$550,000.00) will be granted by the City for the Project, and pursuant to the foregoing paragraph 1, Five Hundred Fifty Thousand dollars (\$550,000.00) will be loaned by the City to the Borrower for the Project. In the event the actual construction costs vary from the foregoing total of the grant and the Loan, the parties agree that actual costs above the foregoing total will be paid by Borrower. The City is not obligated to advance funds in excess of the foregoing total.

8. **Project Improvements.** All infrastructure Project improvements constructed by the Borrower under this Agreement shall become a fixture upon the Land, and shall become the property of the City upon substantial completion thereof.

9. **Further Assurances.** The parties agree to execute such other and further documents and instruments, not inconsistent herewith, as may be reasonably necessary to accomplish the intent and purpose of this Agreement.

10. **Recitals.** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

11. **Amendment.** The terms of this Agreement may only be amended in writing in a document(s) duly executed by all parties.

12. **Binding Effect.** This Agreement shall be binding upon in inure to the benefit of the parties hereto, their heirs, successors, and assigns.

13. **Choice of Law and Venue.** The parties agree that the terms of this Agreement and the Promissory Note and along with the rights and obligations of the parties shall be controlled by the laws of the State of South Dakota. Any dispute arising out of this agreement or the Promissory Note shall be litigated only in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.

14. **Merger.** This written Agreement along with the Promissory Note constitute the entire agreement of the parties. There are no other promises or consideration. All prior negotiations are merged herein or intentionally omitted.



