

AGREEMENT

AGREEMENT MADE THIS _____ day of _____, 200_, by and between Rapid City Racers Swim Club, Inc., hereinafter referred to as “Racers” and the City of Rapid City, hereinafter referred to as “city”.

FOR AND IN CONSIDERATION of the mutual benefits to accrue from the performance of the covenants herein contained the parties herby agree as follows:

1. Purpose. The purpose of this agreement is to set forth the terms and conditions whereby the Racers contract to organize, supervise, and conduct a competitive swim team program at the Rapid City Swim Center.

2. Racers Obligations. The Racers shall provide a qualified coach (es) and will organize, supervise, and conduct the Rapid City Racers Swim Program at the Swim Center outlined herein. The program is scheduled to consist of practice sessions starting September 11, 2006 and conclude June 22, 2007. The allotted lane and time are as follows:

a. 4:00 – 5:00 pm	Monday thru Friday	5 lanes
b. 5:00 – 6:00 pm	Monday thru Friday	5 lanes
c. 6:00 – 7:30 pm	Monday thru Friday	5 lanes
d. 8:00 – 10:00 am	Saturday	5 lanes

Note: On November 1, 2006, at the end of the recruiting cycle, the Racers will have the option of increasing or decreasing their lanes usage depending on their coaching and member situation.

The City reserves the right, when needed, can reduce the number of lanes used by the Racers. If City reduces lane usage, City will deduct \$2.00 per lane hour from the monthly payment.

All Racers members practicing at the Swim Center will be required to purchase an annual swim pass. The Racers organization will guarantee that **fifty (50)** annual passes will be purchased on or before the **15th of November, 2006**. Those Racers that already have an annual pass will not be required to purchase another, and those passes already purchased will count towards the **50** annual pass requirement. **If the Racers do not make the deadline for purchasing the fifty passes, they will pay, in one lump sum, the amount equal to that of the passes not purchased.** (A family with multiple Racers can purchase an annual family pass. Each swimmer practicing within the family pass structure that is a member of the Racers organization will count as **one** single pass holder for the purpose of filling the **fifty** guaranteed passes.)

The Racers organization will pay the Rapid City Swim Center **\$ 4950.00 (\$495.00 per month)** for the lap lane usage. This payment shall be received by the Swim Center on or before the **10th** of each month. **This amount may increase or decrease on November 1st, depending on the lane usage needs. (See Section 2 above.)**

The Racers shall have full use of all Rapid City Swim Center facilities to host **two** competitive swim meets. One meet to be held on Oct **21, 2006** and the second meet on January **20-21, 2007**. The Racers may operate a concession facilities, utilizing the Swim

Center facilities during these meets, but the Parks and Recreation Director, or his designee, shall have the discretion to prevent the sale of any or all concession items in conflict with the Swim Center policies. **The Racer will compensate the City 10% of the gross sales during these meets. The Racers will also pay the Swim Center a fee of \$4.00 per participant for each of the scheduled meets.** The Racers shall assign a Meet Director responsible for all aspect of the meets including setup, cleanup and safety. Guidelines for each of these will be coordinated with the Aquatics Division Manager **at least a month prior to each scheduled meet.**

The Racers shall be responsible for all promotion, registration, record keeping, recruiting of staff, supervision of staff and programming. The Racers agree to leave the premises each day in as good condition as found.

The Racers may not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate nor permit discrimination against any person or group of persons in the use of the Rapid City Swim Center for swimming competition in any manner prohibited by local, state, or federal laws. The Racers further agree to comply with the requirements made to enforce the foregoing which may be required of or by the City.

The Racers will be liable for any and all damages done to any part of the city's property and equipment caused by the program while the Racers are on the premises.

3. City Obligations. The City will provide access to the Rapid City Swim Center during the program schedule stated above. The City will provide maintenance to ensure the pool is available to the Racers by 5:15 am each day during the program period.
4. Liability and Indemnity. **The Racers agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct or management of the business conducted by the Racers. City shall not be liable and the Racers waives all claims for damages to person(s) or property sustained by the Racers, its agents, servants, invitees, and customers resulting from the condition of the building in which the leased premises are situated or resulting from any accident in or about said building or said leased premises.**
5. Insurance. **Racers shall purchase and maintain at a minimum the following insurance during the term of this agreement:**
 - a. **Worker's Compensation coverage as required by law, including Employer's Liability Insurance of not less than:**

Bodily Injury by Accident	\$100,000.00 Each Accident
Bodily Injury by Disease	\$100,000.00 Each Employee
Bodily Injury by Disease	\$500,000.00 Policy Limit
 - b. **Commercial General Liability Insurance with a Combined Single Limit of Liability of not less than:**

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	\$1,000,000.00

Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

- c. Commercial Automobile Insurance for owned autos, hired and non-owned automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000.00) each person and One Million Dollars (\$1,000,000.00) aggregate.
- d. Commercial Umbrella Insurance providing excess liability over primary coverage of Employer’s Liability Commercial General Liability, and Commercial Automobile Liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate.
- e. Additional insurance regulations. Each Insurance policy shall include the following conditions by endorsement to the policy:
 - A. Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to City by certified mail to: City Finance Officer, 300 Sixth Street, Rapid City, South Dakota, 57701, or to such address as the City may designate in writing. The Racers shall also notify City in a like manner within ten (10) days of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Racers.
 - B. Companies issuing the insurance policy or policies shall have no recourse against the City for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Racers.
 - C. The Term “City” shall include all elected officials, boards, commissions, divisions, departments, and officers of the City and individual members and employees thereof in their official capacities, and while acting on behalf of the City.
 - D. The City shall be endorsed to the required policy or policies as an additional insured.
 - E. The policy clause “Other Insurance” shall not apply to any insurance policy coverage currently held by the City, to any future coverage, or to the City’s self-insured retentions of whatever nature. Racers and City each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for the loss of or damage to such waiving party or its property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Racers and City shall give noticed to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

6. Assignment. This agreement shall not be assigned nor any right hereunder assigned or sublet by the Racers without written consent of the City.
7. Termination. If either party shall fail to perform any of the obligations established by this agreement, the agreement may be terminated by the other party upon thirty (30) day notice in writing thereof.

Dated this _____ day of _____, 2006

CITY OF RAPID CITY

ATTEST:

Finance Officer
(SEAL)

MAYOR

RAPID CITY RACERS SWIM CLUB, INC.

Jan Blumenthal, Secretary

Mike McCauley, President

Sate of South Dakota)
) SS.
County of Pennington)

On this the _____ of _____, 2006 before me, the undersigned officer, personally appeared Jim Shaw 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 instrument for the purpose 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)

Sate of South Dakota)
) SS.
County of Pennington)

On this _____ day of _____, 2006 before me, the undersigned officer, personally appeared **Jan Blumenthal**, who acknowledged herself to be the Secretary of the Rapid City Racers Swim Club, Inc., a corporation, and that she as such Secretary, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the Rapid City Racers Swim Club, Inc., by herself as Secretary.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Sate of South Dakota)
) SS.
County of Pennington)

On this _____ day of _____, 2006 before me, the undersigned officer, personally appeared **Mike McCauley**, who acknowledged herself to be the President of the Rapid City Racers Swim Club, Inc., a corporation, and that she as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the Rapid City Racers Swim Club, Inc., by herself as President.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)