

## AGREEMENT

THIS AGREEMENT IS MADE by and between Rapid City Racers Swim Club, Inc., a South Dakota nonprofit corporation, hereinafter referred to as "Racers", and the City of Rapid City, a South Dakota municipal corporation, 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 hereby 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 Horace Mann Swimming Pool.

2. Racer Obligations. The Racers shall provide a qualified coach/ supervisor and will organize, supervise, and conduct the Rapid City Racers Swim Program at Horace Mann Swimming Pool outlined herein. The program is scheduled to consist of practice sessions between 7:30 a.m. to 9:30 a.m. beginning June 1, and ending on August 14, 2009, five days per week, with five (5) lanes per morning practice, and two (2) lanes during the evening public lap swim.

The Racers shall also have full use of all Horace Mann Swimming Pool facilities to host competitive swim meet on July 3-5 and July 24-26, 2009. The Racers shall be charged a reduced rental fee of \$800.00 for the season, which includes practice times. The Racers will be charged \$125.00 pool rental per meet and \$4.00 per person rental fee for multi-day swim meets, as these costs are *not* included in the basic rental agreement. The Racers shall assign a Meet Director responsible for all aspects of the meets including safety rules and closure because of inclement weather. The City will provided guidelines for set up and clean up of the facility during swim meets.

The swim club members are not required to purchase a City season swim pass. The Racers shall be responsible for all promotion, registration, record keeping, recruiting of staff, supervision of staff and programming. The Racers shall provide payment to the City for the rental within ten (10) days of the first day practice.

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 Horace Mann Swimming Pool 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 damage done to any part of the City's property caused by the program while the Racers are on the premises.

3. City Obligations. The City will provide access to Horace Mann Swimming Pool during the program schedule stated above. The city will provide maintenance to ensure the pool is available to the Racers by 7:30 a.m. each day during the program period.

In the event the pool becomes damaged, unusable or unavailable, the City shall have the right to cancel this Agreement and its obligations hereunder without recourse, and the Racers shall be entitled to a pro rata reduction in the rental fee paid or payable hereunder.

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:

i. 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.

- ii. 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.
- iii. 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.
- iv. The City shall be endorsed to the required policy or policies as an additional insured.
- v. 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. Relationship between the Parties. This Lease does not create an employment relationship between the City of Rapid City and Racers’ officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Racers and the City of Rapid City. No agent of Racers shall be the agent of the City, and Racers 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.

7. Assignment. This agreement shall not be assigned nor any rights thereunder assigned or sublet by the Racers without a written consent of the City.

8. 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 Ten (10) days' notice in writing thereof, provided that if the Ten (10) day period expires during the Racers Swim Program, this agreement shall terminate at the end of such program period.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

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

11. 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.

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

13. 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 Contract, which shall remain in full force and effect.

14. 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 \_\_\_\_\_, 2009

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
Finance Officer  
(seal)

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

On this the \_\_\_\_\_ of \_\_\_\_\_, 2009 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 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.

(seal)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**RAPID CITY RACERS SWIM CLUB, INC.**

By \_\_\_\_\_  
David Godbe  
Its President

And \_\_\_\_\_  
Laura Hughes  
Its Secretary

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned officer, personally appeared Dave Godbe, who acknowledged himself to be the President of the Rapid City Racers Swim Club, Inc., a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Rapid City Racers Swim Club, Inc. by himself as President.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned officer, personally appeared Laura Hughes, 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 purposes 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.

(seal)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_