

*Approved for
K-MHPC 11-1-07*

**MEMORANDUM OF AGREEMENT BETWEEN
THE CITY OF RAPID CITY
and
KIWANIS-MARY HALL PARK COMMITTEE, INC.**

This agreement is by and between the City of Rapid City, SD, a municipal corporation (hereinafter referred to as City) and the Kiwanis-Mary Hall Park Committee, Inc. (hereinafter referred to as K-MHPC), a non-profit benevolent corporation of Rapid City, SD.

PREAMBLE

The area known as Mary Hall Park, encompassing approximately 10 acres which the City accepted by deed in 1952 for the purpose of a park, is located north of west South Street, south of Hall Street, east of Payton Court, and west of the National Guard Camp. The park is within the Lime Creek drainage area. In the year 1999, the Kiwanis Clubs of Rapid City authorized formation of a separate, autonomous non-profit corporation, known as Kiwanis-Mary Hall Park Committee, Inc., which draws support from the Kiwanis Clubs. By resolution, the City of Rapid City approved the park plan submitted by K-MHPC and granted K-MHPC permission to proceed with development. Among other responsibilities, K-MHPC's mission is to raise money to underwrite costs of development, promotion and agreed-upon maintenance within this park. Among other responsibilities, the City's mission is to protect the public's interest in the park.

WHEREAS

Both entities mentioned herein are involved in development of a public park, both stipulate to the following:

1. K-MHPC shall construct trails and/or structures in accordance with a master plan approved by the City.

2. Mary Hall Park is designed principally for use as an educational and recreational facility. Improvements are intended to assist the study of in-creek flora and fauna, creekside flora and fauna, and limited prairie flora and fauna, as well as recreational activity.

3. The park shall be open to the public at times prescribed and/or scheduled by the Parks Department.

4. Except for construction specifically initiated and undertaken by the City, K-MHPC will provide money, materials and other resources for construction of prescribed features and/or will reimburse the City for the same. Any additions and modifications to the bicycle path and its attendant structures will be managed by the City, with advanced notice to the Lessee and the costs will be paid by the City. Any portion of any project paid for with tax revenue shall comply with applicable bid laws.

5. K-MHPC will accept financial responsibility for routine maintenance of structures, trails and signage constructed by K-MHPC. Assessment of routine maintenance needs will be a joint responsibility of the signatories on an annual basis, and upkeep will be subject to acceptance by the City. Maintenance will be done in a timely fashion. Labor may be voluntary. Emergency situations resulting from vandalism or acts of nature may require immediate attention and intervention by either party.

6. K-MHPC will provide people and equipment to pick up and remove trash or other items foreign to the park and to waters within the park.

7. The K-MHPC will be responsible for and pay for mowing at whatever interval deemed necessary by the City, as well as control of weeds and undesirable plants, insects and/or undesirable animals. K-MHPC may, from time to time, request the Parks and Recreations Department assistance with general ground maintenance, by making the request to the Director

of Parks and Recreation or his designee. The City will be responsible for bike path upkeep and snow removal therefrom.

8. All improvements will be in accordance with City rules and regulations and will be owned by the City from the beginning point of the construction. All actions are subject to City approval.

9. K-MHPC shall retain a General Contractor to supervise construction of any and all improvements. The General Contractor shall comply with all rules and regulations of the City and shall at all times keep the City informed of progress on any construction project. All construction shall be come a City structure.

10. Insofar as is possible, the makeup of work details and their mission will be communicated in advance to the Director of Parks and Recreation, and the names of those taking part will be recorded.

11. The Lessee 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 park conducted by the Lessee. City shall not be liable and the Lessee waives all claims for damages to person(s) or property sustained by the Lessee, 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.

12. Lessee shall purchase and maintain at a minimum the following insurance during the term of this agreement and provide a Certificate of Insurance to the City showing:

A. 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

B. 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.

C. 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.

D. 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 Concessionaire 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 Concessionaire.

(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 Concessionaire.

(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.

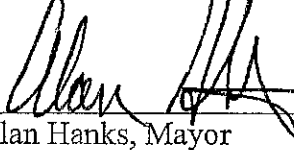
(iv) The City shall be endorsed to the required policy or policies as an additional insured.

(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. Concessionaire 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. Concessionaire and City shall give noticed to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.


12. This agreement will remain in effect for a period of five years, when it may be renewed, altered or terminated.

EFFECTIVE DATE: In witness whereof, the parties hereto have executed this agreement this 15th day of October, 2007.

CITY OF RAPID CITY

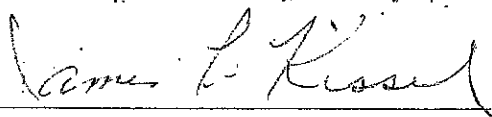

Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

KIWANIS-MARY HALL PARK COMMITTEE

By: 

State of South Dakota)

SS.

County of Pennington)

On this the 19th day of October, 2007, 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.

Jacqueline M. Perry
Notary Public, South Dakota

My Commission Expires: 7-15-2012

(SEAL)

State of South Dakota)

SS.

County of Pennington)

On this the 1st day of November, 2007, before me, the undersigned officer, personally appeared James L. Kiesel, who acknowledged himself to be the President, of the Kiwanis-Mary Hall Park Committee, Inc., a South Dakota corporation, and that as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Kiwanis-Mary Hall Park Committee, Inc. by himself as President.

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

Margaret Paul
Notary Public, South Dakota

My Commission Expires:

(SEAL) 6/25/2009