

**FACILITY LICENSE AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND BADLANDS SABRES HOCKEY GROUP LLC**

In consideration of the mutual promises and agreements contained herein, this Facility License Agreement between the City of Rapid City and Badlands Sabres Hockey Group LLC ("Agreement") is made by and between the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the "Owner" and BADLANDS SABRES HOCKEY GROUP LLC, a domestic limited liability company organized under the laws of the State of South Dakota, located at 4004 Lofty Pines Road, Piedmont, SD 57769, hereinafter referred to as the "Licensee."

**ARTICLE 1
GRANT OF LICENSE**

The Owner hereby grants to the Licensee a license to use the Roosevelt Ice Arena (the "Facility") located at 235 Waterloo Street, Rapid City, SD 57701, for holding hockey games and other related hockey events. The Licensee shall have the exclusive right to schedule and produce NA3HL hockey events in the Owner's Ice Arena.

In addition to the use of the Ice Arena, the Licensee will be provided, a home team locker room, as part of this Agreement. Licensee will be responsible for the maintenance, housekeeping, and appearance of the home team locker room. Any modifications to the home team locker room is at the expense of the Licensee, and must be approved, in advance, by the Owner.

The Owner retains the right to schedule and promote non-hockey events in the Ice Arena and hockey events that are not in direct competition with the NA3HL, such as youth, amateur, or non-professional adult hockey tournaments or other similar events.

**ARTICLE 2
TERM OF AGREEMENT AND CONTINGENCIES**

The term of this Agreement is three (3) years from the time when both parties' signatures are affixed to this Agreement. This Agreement will automatically renew for a three (3) year term unless either party notifies the other in writing of its intent not to renew the Agreement at least one hundred and eighty (180) days prior to the expiration of the current three (3) year term.

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Common Council for this Agreement's purpose. If for any reason the Common Council fails to appropriate funds or grant expenditure authority, or if funds become unavailable by operation of law, this Agreement will be terminated by the Owner by written notice. Termination for any of these reasons is not a default or breach by the Owner nor does it give rise to a claim against the Owner.

This Agreement is contingent upon the Licensee being able to obtain and receive all necessary approvals from the NA3HL.

The Licensee agrees to remain a Roosevelt Ice Arena tenant, playing all games at the Ice Arena with the exception of special events to be held at the Rushmore Plaza Civic Center. For any games that are held outside the Owner's facility, the Licensee will be charged a \$500 fee per occurrence (including for games held at the Rushmore Plaza Civic Center). The Licensee acknowledges there is no option to relocate the team to another location through the term of this Agreement unless approved by the City Council.

ARTICLE 3 LICENSEE FEES AND CHARGES FOR USE OF THE FACILITY

1. Facility License Fees

There are two types of "Facility License Fees": the base fee for the use of the Facility for games and the base fee for the use of the facility for practices and camps. The base fee paid by the Licensee for the use of the Facility will be \$116.00 per hour for preseason games, regular season games, and postseason games. The base fee paid by the Licensee for practices and camps will be \$78.00 per hour. The timeframe for the base fee will commence thirty minutes before the scheduled start time of a game and will end when the game concludes. The timeframe for the base fee for practices and camps will commence at the scheduled start time of the practice or camp and will end when the practice or camp concludes. All fees will be prorated. The base fee includes the following services, equipment usage, and Facility usage: Ice Arena, setup, tear down, ticket takers, housekeeping, ice technicians, ticket printing, credit card fees, and equipment owned by the Roosevelt Ice Arena. Any security services required will be provided and paid for by the Owner. If Licensee requests additional security, Licensee will be responsible for the additional expense.

Owner will bill Licensee on a monthly basis. Owner reserves the right to charge a 1.5% finance charge per month and/or costs for collection of unpaid Facility License Fees (including reasonable attorneys' fees) for any unpaid bill extending twenty-one (21) days beyond the due date.

Facility License Fees will increase by five (5) percent each year.

2. Miscellaneous Charges and Items

In addition to the Facility License Fees, the Licensee will be responsible for paying the following expenses and charges:

- a. The Licensee's standard team business expenses such as: advertising and insurance.
- b. The Licensee's additional venue expenses associated to "special promotional events" that may add expenses to a typical game, such as: concerts, parties, etc.
- c. The cost of any additional furnishings or fixtures requested by the Licensee.

The Licensee will be responsible for hiring and paying any additional personnel (other than Owner's management staff) needed to facilitate the Licensee's event (which is not included in the listing above), such as: score keepers, reader board operators, or other forms of musical entertain.

3. Food and Beverage Sales

The Owner will retain all ancillary incomes from food and beverage sales.

4. Box Office Requirements

The Licensee is entitled to 75% of gate receipts for the Licensee's licensed events in the Ice Arena. The Owner is entitled to 25% of game gate receipts. The Licensee, exclusively using the Owner's point of sale system for ticket sales, will be the sole source for the Licensee's season ticket sales, of which will continue to be a 75%/25% split. The Owner will provide up to 20 tickets per event that are used as giveaway promotion or team comp tickets that will be of no charge. These ticketing provisions within this Agreement will be subject to renegotiation if the Owner changes point of sale systems within the duration of this Agreement. The Licensee is responsible for selling season and group tickets while the Owner is responsible for selling single game tickets.

ARTICLE 4 SCHEDULING

The Owner will use its best efforts to make the Ice Arena available to the Licensee a minimum of twenty-four (24) times on Friday and Saturday dates between September 1st and April 15th of each year. Practice times will be Monday through Thursday, daily, from 8:00 am until 9:30 am, unless otherwise negotiated. Camp times will be negotiated.

ARTICLE 5 GENERAL PROVISIONS REGARDING LICENSEE'S USE OF THE FACILITY

In allowing the Licensee use of the Facility and its Ice Arena, the Owner does not relinquish its right to control the management thereof and to enforce all necessary and proper rules for the management and operation of the same. The Owner, through its employees and agents, may access all areas of the Facility at any time and on any occasion. The Owner reserves the right to eject, or cause to be ejected, any objectionable person.

The Licensee shall not use the Facility, or permit the Facility to be used, by any of its officers, employees, agents, guests, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Facility. If the Owner believes, in its sole discretion, that such prohibited acts are reasonably likely to occur, or that the licensed event could pose an imminent safety risk to the event participants, Facility patrons, or Facility staff, the Owner may in its sole discretion take any legal means necessary to prevent such occurrences, up

to and including the immediate termination of this Agreement. Such an immediate termination of this Agreement by the Owner is not considered a breach of the Agreement.

Licensee will not perform publicly any copyrighted content, including but not limited to live music or broadcast music (from recordings, radio, television, or via streaming services) without the proper authorization from the copyright holder. Licensee will abide by all copyright laws in conjunction with Licensee's use of the Facility. Licensee will indemnify, defend, and hold harmless the Owner, its common council, officers, employees, and agents against all claims, expenses and losses resulting from any copyright infringements by Licensee that occurred on City property.

The Licensee agrees that at all times it will conduct its activities with full regard for public safety. The Licensee shall comply at all times with the laws and regulations of the United States, the State of South Dakota, Pennington County, and the City of Rapid City. The Licensee further agrees to comply with all lawful orders of law enforcement, the fire department, or other municipal authorities and will not do, or allow to be done, anything that would violate such law, ordinances, regulation, or orders.

ARTICLE 6 CONDITION OF THE FACILITY

The Owner shall have the continuing responsibility and obligation to maintain the Facility and agrees to keep the Facility in good repair with the exception of normal wear and tear. The Licensee shall not damage, injure, deface, or otherwise mar the Facility, or permit others to do so. If the Licensee or its officers, employees, agents, or invitees cause damage to the Facility, the Licensee agrees to repair or restore or, pay to repair or restore, the Facility to its original condition.

The Licensee shall not make any alterations or improvements to the Facility, with the exception of movable trade fixtures, without the express written consent of the Owner. If the licensee or its officers, employees, agents alter or make improvements to the Facility without the Owner's consent, the Owner may require that:

1. The Licensee, at the Licensee's sole expense, remove such alteration or improvement and restore the Facility to its original condition; or
2. If the Licensee fails to restore the Facility to its original condition, the Owner can cause such work to be done. The Licensee will reimburse the Owner for the cost of such work and the Owner can withhold an amount equivalent to the cost of such work from any payments to the Licensee in order to satisfy any amounts due and owing.

Any improvements, alterations, or fixtures installed by the Licensee upon expiration of the Agreement shall become the property of the Owner.

ARTICLE 7 TEAM MERCHANDISE AND EVENT PROGRAMS

The Licensee will have the exclusive right to sell team and NA3HL merchandise and souvenirs within the Facility. The Licensee will be allowed use of a team store located within the main concourse of the Ice Arena on game days during the hockey season and for any playoff games. The Licensee will also be allowed to set up kiosks in mutually agreed upon locations to sell souvenirs and merchandise. The Licensee will also have the exclusive right to sell game day programs and all advertising within such programs for its events within the Ice Arena. The Licensee will retain all ancillary income from its sale of souvenirs, merchandise, and event programs.

ARTICLE 8 BROADCASTING RIGHTS

The Licensee shall have the exclusive right to negotiate and enter into agreements to broadcast games and events being conducted by the Licensee within the Ice Arena. The Licensee will keep the Owner informed of any and all broadcasting agreements into which the Licensee enters.

ARTICLE 9 PARKING

Patrons attending the Licensee's licensed events will be entitled to use the parking at the Facility. The Owner does not guarantee that a specific number of spaces will be available for Licensee's events. The Owner retains the right to manage all parking at the Facility including the right to charge parking fees if it chooses to do so. If paid parking is implemented, the revenues will be retained by the Owner.

ARTICLE 10 ADVERTISING WITHIN THE FACILITY

The Owner retains the right to create and lease any and all advertising inventory within the Facility as it deems appropriate to the extent not inconsistent with other provisions of this Agreement. Subject to the advertising restrictions and provisions contained in this Agreement and any advertising policy applicable to the Facility, the Licensee will have the right to sell and retain the proceeds of the advertising within the Ice Arena bowl listed herein: thirty of the Ice Arena's dasher boards as selected by the Owner, "zam-wrap" on the Zamboni, four banner locations in the beer garden area, two large north wall banner locations, twelve banner locations on the south wall, eight in-ice logos in areas chosen by the Owner. However, the Licensee agrees that it will be responsible for paying an advertising installation, maintenance, or removal fee of \$50 per hour for any work that must be done by the Owner to install, maintain, or remove the advertising. The fee will be prorated. Any installation, maintenance, or removal of advertising will be done by the Owner and may not be done by Licensee or a contractor of Licensee, excluding the "zam-wrap" installed on the Zamboni. The Licensee agrees that it will be necessary to remove the advertising if this Agreement has been terminated for any reason or if the Agreement term has ended and the Agreement is not renewed. In such case, the Licensee agrees that it will be responsible for paying the removal fee for the removal of the advertising and that this term will survive the termination or conclusion of the Agreement. The Owner retains the Facility's naming rights.

Final approval for any advertising shall be subject to approval by the Parks and Recreation Department Director or his/her designee. Political advertisements are not permitted. This includes advertisements for or against political candidates, political campaigns, ballot measures, or political parties or organizations. Advertisements shall not:

- a. Advertise products in direct competition with the Ice Arena's business objectives;
- b. Be false, misleading, or deceptive;
- c. Promote unlawful or illegal goods, services or activities;
- d. Imply or declare an endorsement by the City of Rapid City or the Ice Arena;
- e. Promote tobacco or smoking-related products;
- f. Promote unlawful or illegal goods, services or activities;
- g. Advertise images or information that may be considered violent or otherwise inappropriate, especially to minors;
- h. Promote escort services, dating services or adult entertainment businesses or establishments; or
- i. Contain sexual, nudity or any indecent behavior or implication.

The Owner reserves the right to reject or remove any advertisement that, at its sole discretion, violates this policy. Licensee will indemnify and hold harmless the City of Rapid City, its common council, officers, employees, and agents against all expenses and losses resulting from the publication and contents of the advertisement, including but not limited to, claims for libel, violation of privacy, copyright infringements, plagiarism or advertising errors or omissions. The Owner is not responsible for any loss, damage or theft to advertising.

ARTICLE 11 TAXES

The Owner shall not be responsible for the payment on behalf of the Licensee of any taxes, late charges, or penalties that arise out of this Agreement or the Licensee's use of the Owner's Facility. Licensee shall pay and discharge promptly all taxes, assessments, fees, for all sales taxes on tickets sold by Licensee. The Owner will retain and remit sales tax on tickets sold by the Owner.

ARTICLE 12 INDEPENDENT CONTRACTOR

The Licensee is a domestic limited liability company organized under the laws of the State of South Dakota and its employees are independent contractors and are not employees or agents of the Owner. This Agreement does not create any employee/employer relationship between the Owner and the Licensee, its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between the Owner and the Licensee, and no agent of Licensee shall be the agent of the Owner. Licensee covenants that it will not take any action in the name of, or by holding itself out as the agent of, the Owner.

ARTICLE 13
LIABILITY AND WORKERS' COMPENSATION INSURANCE

The Licensee will be responsible for obtaining at its own expense commercial general liability insurance in a form and amount that is acceptable to the Owner. For the initial term of the Agreement the minimum coverage shall be:

General Aggregate: \$2,000,000
Per Occurrence: \$1,000,000
Damage to Premises: \$1,000,000

Licensee shall furnish to the Owner a complete copy of its insurance policy, including any exclusions or riders, and a certificate of insurance of required coverage. The certificate of insurance of required coverage shall state that the Owner shall be given any notice of cancellation at least 30 days prior to any cancellation, unless the cancellation is for nonpayment of premiums. Additionally, the Licensee will provide the Owner with an updated certificate of insurance showing proof of coverage at least twenty (20) days prior to the expiration of its current policy or at any time a copy is requested by the Owner. The policies issued under this provision shall be occurrence based and not claims made, nor shall they contain exclusions of coverage relating to sporting events, open floor performers, volunteers, off premises activities, pyrotechnics, or fireworks unless such exclusions are expressly approved by the Owner. The Owner and the Owner's public officers, employees, and agents shall be named as additional insureds on the Licensee's liability insurance policies. Any policy limits will in no way limit the liability of the Licensee.

Lessee's insurance coverage shall be primary to any insurance coverage maintained by the Owner. Lessee's insurance coverage shall not seek contribution from any insurance coverage maintained by the Owner. The parties agree that the Owner may adjust these insurance requirements on an annual basis and will provide written notice to Lessee of any additional requirements for insurance required by this Section.

The Licensee will maintain workers' compensation insurance in a type and amount as required by South Dakota Law. The Licensee will provide the Owner with proof of such coverage, at least annually, or at any time a copy is requested by the Owner.

ARTICLE 14
DEFAULT AND TERMINATION

Unless stated otherwise in this Agreement, if either party fails to perform any obligation under this Agreement or violates any provision of this Agreement, the non-breaching party shall notify the breaching party in writing and shall provide the breaching party with a reasonable period of time, not less than thirty (30) days, to correct, remedy, and cease such breach. In the event the breaching party fails to correct, remedy, and cease such breach within the time specified, the non-breaching party may take any of the following actions:

Immediately terminate this Agreement; or

Pursue each and every remedy available at law or equity including recovery of damage, injunctive relief, or specific performance.

Notwithstanding the above provision, if the breach by the Licensee, its officers, employees, or agents is such that it threatens the health, welfare, or safety of persons or property, then the Owner may, in its discretion, require that such breach be cured immediately, or in a time frame of less than thirty (30) days. A lapse of any of the Licensee's required insurance coverage is a breach that is specifically required to be cured immediately. If the Licensee does not immediately cure a lapse of its required insurance coverage, the Owner may immediately suspend the Licensee's use of the Facility until such time as the breach is cured. If the breach is not cured within thirty (30) days, the Owner may then terminate this Agreement.

If the Facility is damaged due to acts of God, floods, fires, strikes, acts of terrorism, or if severe weather or a pandemic prevents the Licensee's use or occupancy of the Facility, or otherwise prevents the Owner from fulfilling the terms of this Agreement, the Owner may terminate this Agreement and the Licensee agrees to release the Owner from any damages caused thereby.

If Licensee shall dissolve, become insolvent or otherwise unable to fulfill the terms of this Agreement, or abandon the use of the Premises for one season, this Agreement shall terminate and Licensee shall have no further rights hereunder. If Licensee changes the character of its operation significantly from that of operating an NA3HL hockey program, then this Agreement shall terminate and Licensee shall have no further rights hereunder.

ARTICLE 15 INDEMNIFICATION

The Licensee shall indemnify and hold the Owner harmless from any and all losses, claims, causes of action, and damages suffered by any person, organization, or entity as a result of any negligent, reckless, or intentional act or omission by the Licensee, its officers, agents, employees, players, or invitees arising out of the use of the Facility. The Licensee further agrees that if as a consequence of any such act or omission, a suit or cause of action is filed against the Owner, upon notice of commencement of such action, the Licensee shall defend the same at no cost or expense to the Owner and will satisfy any final judgments against the Owner. Nothing contained in this paragraph shall be construed as requiring the Licensee to defend or indemnify the Owner from any claims, causes of action, or damages resulting from the sole negligence of the Owner, its officer, agents, or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

The Owner shall indemnify and hold the Licensee harmless from any and all losses, claims, causes of action, and damages suffered by any person, organization or entity as a result of any negligent, reckless, or intentional act or omission by the Owner, its officers, agents, or employees arising out of the use of the Facility. The Licensee further agrees that if as a consequence of any such act or omission, a suit or cause of action is filed against the Licensee, upon notice of commencement of such action, the Owner shall defend the same at no cost or expense to the Licensee and will satisfy any final judgments against the Licensee. Nothing

contained in this paragraph shall be construed as requiring the Owner to defend or indemnify the Licensee from any claims, causes of action, or damages resulting from the sole negligence of the Licensee, its officers, agents, employees, players, or invitees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

ARTICLE 16
MISCELLANEOUS PROVISIONS

1. Construction of the Agreement

This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Agreement.

2. Entire Agreement & Amendments

This Agreement constitutes the entire agreement of the parties related to the Licensee's use of the Facility. No other promises or consideration form a part of this Agreement and all prior discussions, agreement, and negotiations are merged into this document or have been intentionally omitted. No alterations, amendments, or modifications to this Agreement shall be valid unless properly executed via written instrument by the parties hereto.

3. Severability

If one or more provisions of this Agreement is declared invalid or unenforceable for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if they can be given effect without the invalid section(s) or provision(s).

4. Notices

Any notice, consent, or other formal communication hereunder must be in writing and may be delivered in person, or via registered or certified mail. Such notice shall be deemed to have been received upon its actual delivery, or in the case of a communication by registered or certified mail, by depositing such communication with the United States Post Office in a properly addressed envelope with correct postage. Any notices under this Agreement should be given to a party at its following address:

Roosevelt Ice Arena
ATTN: Doug Lowe
235 Waterloo Street
Rapid City, SD 57701

Badlands Sabres Hockey Group LLC
ATTN: Vern Burress

4004 Lofty Pines Road
Piedmont, SD 57769

5. Assignment

This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The rights and obligations of the parties shall not be assigned or transferred by either party without the express written consent of the other.

6. Venue and Choice of Law

The venue for any lawsuit, or legal action, arising out of this Agreement shall be the Circuit Court of the Seventh Judicial Circuit located in Pennington County, South Dakota. This Agreement shall be governed and interpreted exclusively under the laws of the State of South Dakota.

Dated this _____ day of _____, 2021.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Finance Director

(SEAL)

State of South Dakota)

ss.

County of Pennington)

On this the _____ day of _____, 2021, before me, the undersigned officers, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, 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 Director.

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

Notary Public, South Dakota

My Commission Expires: _____

(SEAL)

Dated this 18 day of MARCH, 2021.

BADLANDS SABRES HOCKEY GROUP LLC

[Signature]

By: Vern Burress

Its: MEMBER

State of South Dakota)

ss.

County of Pennington)

On this the 18 day of March, 2021, before me, the undersigned officer, personally appeared Vern Burress, who acknowledged himself/herself to be the member of Badlands Sabres, and that he/she, as such member, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

Tosha Shorthill

Notary Public, South Dakota

My Commission Expires: _____

(SEAL)



My Commission Expires

October 24, 2022

Dated this 18 day of March, 2021.

BADLANDS SABRES HOCKEY GROUP LLC

[Signature]

By: Brendon Hodge

Its: Member

State of South Dakota)

ss.

County of Pennington)

On this the 18 day of March, 2021, before me, the undersigned officer, personally appeared Brendon Hodge, who acknowledged himself/herself to be the member of Badlands Sabres, and that he/she, as such member, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

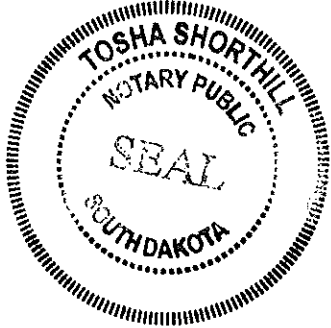
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]

Notary Public, South Dakota

My Commission Expires: _____

(SEAL)



**My Commission Expires
October 24, 2022**

Dated this 18th day of March, 2021.

BADLANDS SABRES HOCKEY GROUP LLC

[Signature]
By: Danny Battocchio

Its: Member

State of South Dakota)
 ss.
County of Pennington)

On this the 18th day of March, 2021, before me, the undersigned officer, personally appeared Danny Battocchio, who acknowledged himself/herself to be the member of Badlands Sabres, and that he/she, as such member, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(SEAL)



[Signature]
Notary Public, South Dakota
My Commission Expires: _____

**My Commission Expires
October 24, 2022**