

**LEASE AGREEMENT BETWEEN CITY OF RAPID CITY
AND RAPID CITY MIDGET FOOTBALL ASSOCIATION, INC.**

For and in consideration of the mutual promises and agreements contained herein, the CITY OF RAPID CITY ("City"), a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 agrees to lease to Rapid City Midget Football Association, Inc. ("Lessee"), a South Dakota corporation organized under the laws of the State of South Dakota, a specified area known as the "Star of the West" complex, subject to the following terms and conditions:

1. Consideration. The City hereby leases to Lessee the below described premises ("Premises") for the sum of One Dollar (\$1.00) and other good and valuable consideration, including but not limited to, maintenance of general grounds and payment of all utility bills. Said sum is payable to the City of Rapid City on or before the first day of January of each succeeding year.

2. Term and Renewal. The term of this Agreement is **from May 1, 2021 ("Effective Date") to December 31, 2023**. Any future agreements between the parties related to the Premises shall be under the terms and conditions mutually agreed to by the parties at that time.

3. Premises. The Premises leased by the City to Lessee is a portion of the property (*see Attachment A that includes a map with boundaries of the Premises clearly distinguished*) that is legally described as follows:

Lot Four (4) of Dairyland Subdivision, Rapid City, Pennington County, South Dakota.

The Premises includes the Midget Football Building at Star of the West Complex and all lands within 25 feet of said building. The Premises is located east of Creek Drive, north of East Saint Patrick Street, west of Sedivy Lane and immediately adjacent to the east bank of Rapid Creek, but does not include the Lacrosse Fields.

4. Use of Premises by Lessee. Lessee shall have priority use of the Premises during the lease period, subject to the terms of this Agreement, for the purpose of storing football equipment. Lessee agrees to cooperate with City's use and others' use of the Premises in compliance with this Agreement.

5. Surrender of Premises. Lessee agrees to surrender the Premises, or a part thereof, in the event it is necessary for expansion or utilization of public park facilities or for any other purpose which City believes is necessary or important. In such case, the City will give Lessee thirty days written notice. Lessee further agrees to abandon the Premises, or a part thereof, in the event a demand is made by the United States government. Lessee agrees to abandon the Premises, or a part thereof, in the event that Lessee or City is ordered to do so by an order of any Court.

6. Use by the City. Lessee agrees that the City may use the Premises when the Premises are not required for use by Lessee. If the City uses the Premises under this Section, it

agrees to leave the Premises in substantially the same condition, reasonable wear and tear excepted. For purposes of this Section, City use shall mean organized activities conducted or sponsored by the City.

7. Contacts. Anything required by the Agreement to be delivered to Lessee in writing shall be delivered to the following contact for Rapid City Midget Football Association, Inc.: Chris Meier, President Rapid City Midget Football Association, Inc, 1615 Sedivy Lane, Rapid City, SD 57703. Lessee has a continuing obligation to ensure that the Rapid City Director of Parks and Recreation (“Director”) has accurate contact information for Lessee and to notify the Director of any changes to the contact information herein.

Unless otherwise specified in this Agreement, the contact for the City will be: Director of Parks and Recreation, 515 West Boulevard, Rapid City, SD 57701, (605) 394-4175.

8. Maintenance.

8.A. Lessee Responsibilities.

i. Property Damage. Lessee agrees to maintain said Premises under the authority of the Parks and Recreation Director or his/her designee. Lessee agrees to repair or replace any property damaged, either willfully or accidentally, by its members or invitees which occurs to the Premises. Lessee is entitled to recover costs for damages or to require repairs for damages or improper maintenance that occurs while the Premises is used and controlled by others, including those enumerated in Section 6 of this Agreement.

ii. Trash and Recycling. Lessee agrees to be responsible for policing the Premises and picking up and making ready for City collection of all trash, recyclables, debris, and waste material of every nature, resulting from its use of the Premises by itself or any spectators in attendance at the Premises. Lessee also agrees to place all collected trash, recyclables, debris, and waste in a designated location for removal by the City. Lessee agrees that it will not place yard waste or building materials in City trash receptacles. Lessee agrees to promote and encourage recycling throughout the Premises.

To avoid the public’s misuse of trash and recycling receptacles during the off-season, Lessee agrees to move all trash and recycling receptacles to an area of the Premises that is inaccessible to the public, as approved by the Parks Department, immediately after the end of the season.

iii. Notification to City. Lessee agrees to promptly notify in writing City if it observes any needed maintenance to sidewalks, parking areas, trees or other items that the City is obligated to maintain under Section 8.B or any items other than those which the Lessee is obligated to maintain. Lessee may provide the written notification by e-mail to the Parks Division Manager. At the time of this

Agreement, the email addresses for the Parks Division Manager is scott.anderson@rcgov.org.

iv. Structures and Buildings. Lessee is responsible for all maintenance and repair of structures and buildings on the Premises. This responsibility includes, but is not limited to, painting and staining the structures and buildings and maintaining/repairing siding, fascia, soffits, windows, doors and plugged stools or drains.

v. Winterization. Lessee shall ensure that all building systems, such as plumbing, electrical, and heating and cooling systems, are operational through the season to ensure proper winterization at the end of the season. Lessee shall report any modifications to the building systems to Parks Division prior to the end of the season to ensure proper operation and winterization.

8.B. City Responsibilities.

i. Trash. City will provide 300-gallon trash receptacle for use at the Premises and will remove trash on a regular schedule.

ii. Unique or Unusual Maintenance. City, at its own expense, agrees to provide unique or unusual maintenance and routine maintenance to the infrastructure, including but not limited to, repair of broken water mains, sewer, storm sewer and all repairs and surface maintenance of parking lots.

iii. Trees. City will provide maintenance to all trees on Premises, including hazardous tree removal, broken limb removal and corrective pruning. No tree shall be planted or removed without prior approval from the Parks Division.

iv. Structures and Buildings. The City is responsible for all maintenance and repair of plumbing systems, flush valves, drinking fountains, water heaters, electrical circuits, circuit breakers, and switches.

9. Changes to the Premises. No construction or installation of any improvements to the Premises shall occur until the Director of Parks and Recreation or his/her designee has given written approval to the proposed construction. Lessee shall promptly notify the Director of its intentions to construct or install any improvements upon the Premises, and Lessee agrees that it will not perform any such construction unless and until it receives written approval from the Director. With prior written approval of the plans by the Director of Parks and Recreation or his/her designee, Lessee may construct accessory and customarily incidental improvements to the Premises. Any construction or installation of any improvements shall be in conformity with the municipal codes of the City, including any construction within the floodplain or floodway. The parties agree that any permanent improvements or fixtures constructed by Lessee on the Premises are the property of the City.

10. Non-Discrimination. The parties agree that Lessee shall comply with all civil rights and accessibility legislation, including Title VI of the Civil Rights Act of 1984, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, and Lessee shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by local, state, or federal laws. By signing this Agreement, Lessee certifies that it complies, and will continue to comply, with this nondiscrimination requirement.

11. Assignment or Subletting. This Agreement shall not be assigned, nor the Premises subleased, by Lessee except on written consent and approval of the City Council. The fee(s) or payment(s) charged by Lessee for any assignment or sublease shall be limited in value to the costs Lessee will incur pursuant to this Agreement, as applicable. Requests for City approval of an assignment of this Agreement shall be submitted to the Director of Parks and Recreation no less than sixty (60) days before the assignment is intended to be effective. Requests for City approval of a sublease to this Agreement shall be submitted to the Director of Parks and Recreation no less than forty-five (45) days before the sublease is intended to be effective. All such requests for approval shall include a copy of the assignment/sublease and all relevant information, including any payment made as part of the sublease. City reserves the right to withhold consent for any such assignment or sublease, or to negotiate further with Lessee and with intended assignee/sublessee with regard to rights to the Premises, or to enter into a separate Agreement with assignee/sublessee and/or Lessee with regard to the intended assignment or sublease of all or a portion of the Premises.

12. Expense. The City shall assume no expenses as a result of this Agreement or any of the operations of Lessee except for those expenses generated as a result of the City's responsibilities specifically discussed in this Agreement. Lessee agrees to pay its own administration expenses, including but not limited to, lights and electricity, grounds crew, office supplies, miscellaneous equipment, and secretarial fees. Lessee agrees that the electric utilities will be metered in the name of and billed directly to Lessee and that all expenses incurred by it shall be paid within thirty (30) days of due date.

Unless otherwise agreed to by the City, Lessee agrees to provide all funds and resources for use and maintenance of the Premises discussed in this Agreement. All costs expected and unexpected will be paid by Lessee unless other arrangements are made with the City. If Lessee makes any improvements to the Premises that are paid for with public funds, Lessee shall comply with applicable bid laws.

13. Termination of Agreement. The City reserves the right to periodically review the performance of Lessee to evaluate compliance with the terms of this Agreement. Either party may terminate the Agreement for breach of this Agreement upon thirty (30) days written notice to the breaching party. If the breaching party does not cure the breach prior to the date of termination, then the other party may terminate the Agreement. If the breaching party attempts to diligently cure the breach, to the extent such breach cannot be reasonably cured within thirty (30) days, the other party may grant additional time to cure as it deems appropriate, but is under no obligation to do so.

If Lessee shall dissolve, become insolvent or otherwise unable to fulfill the terms of this Agreement, or abandon the use of the Premises, this Agreement shall terminate and Lessee shall have no further rights hereunder. Discontinuation of use of all or part of the Premises for maintenance, repair or rehabilitation purposes of the Premises shall not be deemed abandonment. If Lessee changes the character of its operation significantly from that of a nonprofit corporation, this Agreement shall terminate and Lessee shall have no further rights hereunder.

14. Liability. Lessee agrees that the City shall be held harmless from any and all liability arising from any operation or use under this Agreement of the described Premises by Lessee or its agents or employees or any other person using the Premises. Lessee further agrees to indemnify and defend the City against any and all claims arising from the operation or use under this Agreement of the described Premises by it and its agents, employees, assignees, invitees or any other person using the Premises. The parties agree that Lessee may enter into separate agreements with other users of the Premises to hold harmless Lessee and its directors, members, employees, and agents from claims arising from the use of others as discussed in this Agreement.

Lessee agrees to purchase and maintain bodily injury and property damage insurance for each occurrence of injury or damage in the minimum amount of One Million Dollars (\$1,000,000) for each occurrence of injury or damage and an aggregate limit of not less than Two Million Dollars (\$2,000,000). The City shall be named an additional insured in said policy or policies and the Lessee shall furnish to the City evidence of insurance by a certificate of insurance of required coverage. The parties agree that the City 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.

15. Public Accounting. Lessee agrees to provide the Director of Parks and Recreation with a public accounting of its financial transactions no later than sixty (60) days after the close of its operating year. Such accounting shall be in the form of a report of income and expenses and a balance sheet of Lessee's assets and liabilities. Such accounting shall be made available for public inspection at the City Finance Office.

16. City Authority. All matters pertaining to the terms of this Agreement shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota. The City Council appoints and delegates the Director of Parks and Recreation as the primary contact point for City with Lessee in administering and fulfilling the terms of this Agreement.

17. Relationship between the Parties. This Agreement does not create any employee/employer relationship between the City of Rapid City and Lessee, its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Lessee and City, and no agent of Lessee shall be the agent of City. Lessee 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.

18. Integration. The parties agree that this Agreement, along with any attachments, constitutes the entire understanding between the parties and supersedes all prior negotiations, agreements, and understandings, whether oral or written.

19. Savings Clause. Should any portion of this Agreement be declared void, the remainder of the Agreement shall remain in full force and effect.

20. Choice of Law. This Agreement shall be governed by the laws of the State of South Dakota and any action to enforce the terms of this Agreement shall be venued in the 7th Judicial Circuit, Pennington County, South Dakota.

21. Waivers. The failure by one party to require performance of any provision of this Agreement 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.

22. Amendments. This Agreement may only be amended by a written document duly executed by both parties.

23. Headings. The headings and numbering of the different sections of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of any provision.

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 officer, 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 _____ day of _____, 2021.

RAPID CITY MIDGET FOOTBALL ASSOCIATION, INC.

By: _____
Its: _____

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

On this the ____ day of _____, 2021, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, and that he/she, as such _____, 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.

Notary Public, South Dakota
My Commission Expires: _____

(SEAL)

Attachment A – Rapid City Midget Football Association, Inc

