

## **Media Sales Agency Agreement**

This Media Sales Agency Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2011 between the City of Cheyenne, a municipal corporation organized under the laws of the State of Wyoming, 2101 O'Neil Avenue, Cheyenne, Wyoming, ("City") and Cheyenne Stampede Junior "A" Hockey, LLC, a limited liability company organized under the laws of the State of Wyoming, 3221 East Pershing Boulevard, Cheyenne, Wyoming, ("Cheyenne Stampede") and SeeHear Media, LLC, a Colorado limited liability company, 123 North College Avenue, Suite 120, Fort Collins, Colorado ("SeeHear").

It is mutually understood and agreed that the City is the owner of the City of Cheyenne Owned Ice & Events Center, ("Events Center") 1530 West Lincolnway, Cheyenne, Wyoming, and that this media sales agency agreement grants certain rights to Cheyenne Stampede and SeeHear with respect to the placement of static visual advertising displays on certain portions of the interior of the Events Center. This media sales agency agreement does not grant any rights to Cheyenne Stampede or SeeHear with respect to television advertising, radio advertising, internet advertising, or the placement of any advertising display on any portion of the exterior of the Events Center. It is also mutually understood and agreed that the City shall have the right to reject any advertising display procured by Cheyenne Stampede or SeeHear including, without limitation, advertising relating to alcoholic beverages or tobacco products.

**SECTION ONE. APPOINTMENT OF AGENT:** The City appoints Cheyenne Stampede and SeeHear, and Cheyenne Stampede and SeeHear agree to serve, as the City's sales representatives to advertisers and advertising agencies for a term of two (2) years following the date of this contract. Cheyenne Stampede and SeeHear shall solicit advertising contracts for the City and perform other services as provided in this contract. All advertising contracts for the placement of advertisements within the Events Center shall be in writing and shall be entered into by the City, acting through Cheyenne Stampede or SeeHear, and the advertiser or advertising agency and copies of all such agreements shall be provided to the City upon execution. Subject to the terms and conditions of this Agreement, Cheyenne Stampede and SeeHear shall have the exclusive right to sell advertising and to place approved advertisements:

a. on the dasher boards which surround the ice hockey rink, provided however, that the City shall have the right to sell advertising and to place advertisements on no more than six (6) of the dasher boards and neither Cheyenne Stampede nor SeeHear shall have commission rights with respect to the advertising revenues associated with said advertising.

b. within the ice of the ice hockey rink, provided however, that Cheyenne Stampede shall have the right to place an advertising matt displaying the logo of Cheyenne Stampede in the ice without charge, and providing further that the City shall have the right to place one advertising matt (to be produced at the expense of the City) displaying any logo designated by the City without having to pay any commission to Cheyenne Stampede.

c. on the metal sign board, which is approximately four (4) feet in length and sixteen (16) inches in height which is located above the trophy case inside the ice rink area of the Events Center.

d. on the risers of any and all stairs serving public seating areas of the Events Center, provided however, that the City reserves the right to reject the placement of advertising on any stair riser if the placement of such advertising would create any visual distraction which would present an unreasonable risk of harm to users of the stairs.

e. on no more than twelve (12) wall boards which, for the purposes of this Agreement, are defined as plywood boards approximately four (4) feet in width, and eight (8) feet in length which are owned by the City and which are attached to the interior walls of the Event Center.

f. in the form of vinyl banners (or banners consisting of equivalent materials) to be placed within the interior of the Events Center, provided however, that the City shall have the right to limit the number of such banners, the size of such banners, and the placement of such banners.

g. upon the Olympia ice re-surfacing machine currently owned by the City, and upon any other ice-surfacing machines provided by the City for the maintenance of ice at the Events Center, provided however, that the City shall have the right to reject any advertising displays which interfere with the safe and proper usage of such machines.

h. upon scoreboards owned by the City which are used during Cheyenne Stampede ice hockey games and tournaments.

i. upon and within the advertising display spaces provided for in the interiors of the public restrooms at the Events Center, provided however, that the City shall have the right to limit the number of such advertisements, the size of such advertisements, and the placement of such advertisements.

**SECTION TWO. LIMITATIONS OF RIGHTS GRANTED TO CHEYENNE STAMPEDE AND SEEHEAR:** It is mutually understood and agreed that the City has the right to rent the Events Center to other user groups for uses other than ice hockey.

a. The City has the right to rent the Events Center to one or more arena football teams. User groups which sponsor arena football games shall be required to place pads along the dasher boards which may totally or partially obscure the advertising displays placed on dasher boards by Cheyenne Stampede, by SeeHear, and by the City. Arena football user groups shall also have the right to place advertising displays on pads which are placed along the dasher boards, provided however, that the pads shall be permitted to remain in place only for a reasonable length of time before and after each arena football game as necessary. The placement of such pads for such reasonable periods of set-up and take-down in connection with arena

football games and the placement of advertising on said pads shall not be inconsistent with the rights of Cheyenne Stampede or SeeHear under this Agreement.

b. It is also mutually understood and agreed that the City has the exclusive right to solicit the sale of "naming rights" to the Events Center for any period of time desired by the City, provided however, that if Cheyenne Stampede or SeeHear solicits the sale of "naming rights" to any acceptable advertiser or sponsor, and the City thereafter enters into a written agreement with any such advertiser or sponsor, and the City thereafter actually collects the funds to be paid by the advertiser or sponsor for said "naming rights," the City will pay a commission equal to ten percent (10%) of the funds actually received by the City in the manner provided for in the "naming rights" contract. The "naming rights" contract shall specify the extent to which Cheyenne Stampede, SeeHear, or both are entitled to payment of the commission provided for herein. In the event payment for "naming rights" is extended over any period of time pursuant to the "naming rights" contract, or in the event the advertiser or sponsor delays payment for any reason, Cheyenne Stampede and/or SeeHear shall have the right to collect commission on any such payments for a period of two (2) years following the termination of this Agreement. It is further mutually understood and agreed that, except as provided in this sub-paragraph, the City shall have absolute discretion with regard to the enforcement of any terms or conditions of any "naming rights" contract, that neither Cheyenne Stampede nor SeeHear shall be considered a third party beneficiary of any "naming rights" contract, and that Cheyenne Stampede and SeeHear shall defend, indemnify and hold harmless the City, and all of its officers, agents, and employees, from and against any and all claims, demands, and causes of action which may or could be brought against the City by Cheyenne Stampede or SeeHear, or any of their officers, agents, employees, representatives, successor or assigns as a result of or arising out of any "naming rights" contract. It is expressly understood and agreed that the only cause of action which may be asserted against the City pursuant to this sub-paragraph is a suit to collect the commission provided for herein on any funds actually received by the City pursuant to a "naming rights" contract solicited by Cheyenne Stampede and/or SeeHear and all other claims, demands and causes of action are barred under the Wyoming Governmental Claims Act.

c. It is mutually understood and agreed that the City may rent the Events Center for public events including, without limitation, garden shows, fund-raising events conducted by charitable or civic organizations, fund-raising events conducted by Cheyenne Regional Medical Center and other tax-supported health care institutions, fund-raising events conducted by organizations which promote hunting, fishing, and other sports and recreational activities, and events sponsored by the Greater Cheyenne Chamber of Commerce. It is mutually understood and agreed that the sponsors of events of this type may wish to "pipe and drape" the areas where the dasher boards are located, that the dasher boards will be partially or totally obscured as the result of the placement of pipes and drapes, and that other advertising displays will be placed at the Events Center during such events. It is mutually understood and agreed that the placement of pipes and drapes in this fashion, the placement of other advertising displays during said events, and the receipt by the City of revenues related to any such events shall not constitute a violation of this Agreement and that neither Cheyenne Stampede nor SeeHear shall have any right to receive any commission on any revenues received by the City in connection with such events.

d. It is mutually understood and agreed that the City has contractual relationships with certain advertisers which are antecedent to this Agreement, that the City has the right to maintain such contractual relationships, and that the maintenance of such relationships shall not constitute a violation of this Agreement.

e. It is mutually understood and agreed that Cheyenne Stampede and SeeHear shall bear all costs incurred in connection with the solicitation of advertising contracts and the design, production and maintenance of advertising displays. In addition, Cheyenne Stampede and SeeHear shall bear all costs for the provision of materials which are necessary to attach or affix advertising displays within or upon those advertising venues reserved herein for Cheyenne Stampede and SeeHear. The City shall bear the costs of design, production and maintenance of advertising displays installed on the six (6) dasher boards allocated to the City and of one advertising matt to be placed in the ice. The City shall provide personnel to install advertising displays within or upon those advertising venues reserved herein for Cheyenne Stampede and SeeHear.

f. Neither Cheyenne Stampede nor SeeHear shall have any right, while acting as agent for the City, to enter into an advertising contract with an advertiser for any period longer than two (2) years. Following the expiration of one (1) year from the termination of this Agreement, or any extensions thereof, the City may enter into contractual relationships with all advertisers, customers, prospects and leads which became known to the City through the efforts of Cheyenne Stampede or SeeHear as the City's agents under this Agreement and the City shall have no obligation to pay commissions to Cheyenne Stampede or SeeHear on the revenues received by the City pursuant to such contractual relationships. In the event there is any ambiguity regarding the rights of Cheyenne Stampede or SeeHear under this Agreement, those ambiguities shall be resolved in favor of the City to ensure the City's ability to accommodate the public and enhance the City's ability to generate revenue from use of the Events Center.

**SECTION THREE. AGENT'S COMMISSION:** As compensation for the services to be rendered under the terms of this contract, Cheyenne Stampede shall receive a commission of sixty-five percent (65%) of gross receipts derived from advertising contracts entered into by Cheyenne Stampede acting as the City's agent and SeeHear shall receive a commission of sixty-five percent (65%) of gross receipts derived from advertising contracts entered into by SeeHear acting as the City's agent. Cheyenne Stampede and SeeHear will provide a copy of each advertising contract entered into by either or both of them within thirty (30) days after each such contract is entered into. The City shall have no obligation to pay any commission to Cheyenne Stampede or SeeHear based on advertising contracts which are not in writing, not properly executed, or not approved by the City. Gross receipts from advertising contracts subject to this Agreement shall be collected by Cheyenne Stampede and/or SeeHear and the amounts thereof shall be reported to the City on or before the twentieth (20th ) day of each month. The report shall be accompanied by a check payable to the City of Cheyenne for the City's thirty-five percent (35%) share of advertising revenues. Advertising displays may be removed by the City in accordance with the terms of contracts entered into by Cheyenne Stampede and/or SeeHear acting as agent for the City.

#### **SECTION FOUR. ACCOUNTING BY CHEYENNE STAMPEDE AND**

**SEEHEAR:** Cheyenne Stampede and SeeHear will maintain books and records which shall contain complete and detailed information regarding advertising revenues derived from the sale of advertising subject to this Agreement for a period of one (1) year following the date of termination of this Agreement or any extensions thereof and the City, and its authorized representatives, shall at reasonable times have the right to inspect said books and records to verify Cheyenne Stampede's and SeeHear's accountings regarding its commissions.

**SECTION FIVE. GENERAL OBLIGATIONS OF THE CITY AND CHEYENNE STAMPEDE: AND SEEHEAR:** The City will take reasonable steps to require that other users of the Events Center provide commercial general liability insurance coverage that shall be sufficient to defray the cost of the repair or replacement of advertising displays which may be damaged by other user groups and their principals, sponsors and participants. The City will take reasonable steps to ensure that advertising displays placed by Cheyenne Stampede or SeeHear will not be obscured except as provided in this Agreement. The City will adopt Events Center policies that will prohibit other user groups from vandalizing or defacing advertising displays placed by Cheyenne Stampede or SeeHear and from attaching any material to any advertising display by any means such as glue or other fasteners.

a. Coordination of Use of Facility; Compliance with Law. It is mutually understood and agreed that the Events Center is a public use facility, that Cheyenne Stampede is a user of the facility pursuant to a separate user agreement with the City, and that the City must have flexibility with regard to the use of the facility to accommodate the public and other user groups. Cheyenne Stampede agrees that it will negotiate in good faith with the City to make changes in this Agreement as necessary to ensure that the Events Center is operated and managed in accordance with federal, state and local laws and to maximize the use of the Events Center by the public. In the event the City terminates this Agreement in order to bring the City into compliance with any requirement of local, state or federal law, Cheyenne Stampede and SeeHear Media do hereby release the City, and its officers, employees, and agents from and all claims, demands, causes of action, costs, expenses and judgments arising from or in any way related to the termination of this Agreement, except that Cheyenne Stampede and SeeHear shall have the right to receive commissions following the termination of this Agreement pursuant to Section 8 herein.

b. Insurance. During the term of this Agreement and any extensions thereof, Cheyenne Stampede and SeeHear will maintain the following insurance coverages:

1. Cheyenne Stampede and SeeHear shall file a Certificate of Insurance with the City of Cheyenne verifying each type of insurance coverage listed below.

2. The Certificate of Insurance shall be submitted to and approved by the City of Cheyenne prior to commencement of performance under this bid and the subsequent contract.

3.	Type of Coverage	Minimum Limits
	Commercial General Liability (Including Products and Completed Operations;	\$1,000,000 per Occurrence \$2,000,000 Aggregate
	Workers' Compensation OR Employer's Liability-- Policy Limits	Statutory \$500,000 Each Accident \$500,000 Each Disease- \$500,000 Disease/Each Employee

4. It is understood and agreed that these policies, except for worker's compensation or employer's liability, are primary and not contributory. All policies required under this contract shall be in effect for the duration of this Agreement and for so long as either Cheyenne Stampede or SeeHear is conducting operations under this Agreement. It shall be an affirmative obligation upon Cheyenne Stampede and SeeHear to immediately notify in writing the city risk manager, city clerk, and city attorney of any fact, circumstance, or occurrence that has resulted in or may result in the cancellation or substantive change of any insurance coverage required by this contract, and failure to do so shall be construed to be a breach of this contract.

5. The City of Cheyenne shall be named as an additional insured on Cheyenne Stampede's and SeeHear's insurance policies, except for workers' compensation and employer's liability policies, and Cheyenne Stampede and SeeHear shall provide a copy of the endorsements providing this coverage.

6. The City has the right to reject a certificate of insurance if a Cheyenne Stampede or SeeHear insurer is widely regarded in the insurance industry as financially unstable. Any insurance company providing coverage under this contract shall have a minimum A.M. Best rating of A- (excellent).

7. The City has the right to review the insurance certificates of any or all subcontractors used by Cheyenne Stampede and SeeHear. Further, the City requires that any subcontractor hired or employed by Cheyenne Stampede or SeeHear to perform services pursuant to this Agreement shall provide insurance at least equivalent to that required of Cheyenne Stampede and SeeHear.

8. The City has the right to increase the required minimum limit of liability on any contract project as warranted by an increase in hazard. Examples of increased hazard include, but are not limited to:

- a. handling of hazardous materials
- b. activities involving large congregations of people

9. The City shall have the right to consult with Cheyenne Stampede's and SeeHear's insurance carriers and agents for disclosure of relevant policy information, but the City's failure to request or review such policies, endorsements, or certificates shall not affect the City's rights or Cheyenne Stampede's or SeeHear's obligations hereunder. Disclosure of relevant policy information would specifically involve, but is not limited to:

- a. exclusions
- b. deductibles
- c. claims in progress which could significantly reduce the annual aggregate limit

c. Indemnity. In entering into the Agreement, Cheyenne Stampede and SeeHear agree to defend, hold harmless, and indemnify the City of Cheyenne, its officials, employees, agents, and authorized volunteers against any and all claims, demands, causes of action, costs, injuries, and liabilities, including attorney's fees, arising during or resulting from the Cheyenne Stampede's or SeeHear's activities under this Agreement and Cheyenne Stampede and SeeHear shall carry insurance as set forth in this Agreement. Cheyenne Stampede and SeeHear individually acknowledge their individual understanding of this paragraph and each realizes it may have a financial responsibility to the City.

**SECTION SIX. DIRECT REMITTANCE OF AGENT'S COMMISSIONS:** In the event the City receives a direct payment from any advertiser in accordance with a contract entered into by Cheyenne Stampede or SeeHear as agent for the City, the City shall be authorized to issue a receipt to any person making such payment. The City shall thereafter issue a check payable to Cheyenne Stampede, for advertising procured by it, or to SeeHear, for advertising procured by it, in an amount equal to sixty-five (65%) of the gross amount of the direct payment, said payment to be made on or before the twentieth (20th) day of the month next following the month in which said payment is received. In the event of any dispute between the Cheyenne Stampede and SeeHear regarding the payment of commission under this Section, the City shall issue a check made payable to Cheyenne Stampede and SeeHear and the negotiation of said check shall be sufficient to discharge the City from any and all claims, demands, causes of action, liabilities, and consequential damages associated with the payment of commission under this Section of this Agreement.

**SECTION SEVEN. INDEPENDENT CONTRACTOR:** Cheyenne Stampede and SeeHear are independent contractors operating their own businesses. Except as specifically provided in this Agreement, neither Cheyenne Stampede nor SeeHear nor any of their principals, officers, employees, agents or other representatives shall be regarded as the agent or employee of the City for any purpose whatsoever. All contracts solicited by Cheyenne Stampede or SeeHear shall be subject to the approval of the City and shall neither be binding on the City nor subject to

the agency commission provided for in this Agreement, until accepted and approved pursuant to the signature of an authorized officer of the City.

**SECTION EIGHT. TERMINATION:** This Agreement may be terminated, with or without cause, by any party on giving sixty (60) days advance notice in writing of its intention to do so. In the event of termination, Cheyenne Stampede and SeeHear shall receive commissions on all billings to the extent provided for in this Agreement but for a period no longer than twelve (12) months following the effective date of termination to ensure that Cheyenne Stampede and SeeHear each receives commissions to which each may be entitled on all advertising contracts solicited by either during the effective term of this Agreement.

**SECTION NINE: GOVERNMENTAL IMMUNITY:** Except for the express waivers that are specifically provided for in this Agreement, the City reserves all defenses and immunities available under the Wyoming Governmental Claims Act, W.S. §§ 1-39-101 et seq. It is mutually understood and agreed that the City may be subjected to liability for failure to pay commissions which may be due under this Agreement, but that the City shall remain immune from any and all claims, demands, and causes of action which Cheyenne Stampede or SeeHear may or could otherwise assert against the City including, without limitation, claims for loss of profit, interference with contractual relationships, interference with prospective economic advantage, or claims based on any other theory of liability arising in tort, contract or otherwise. It is further mutually understood and agreed that, except as specifically provided in this Agreement, the City is immune from any and all costs, expenses, damages, judgments, and attorney's fees which may be incurred by Cheyenne Stampede or SeeHear as a result of or arising in any way out of this Agreement.

**SECTION TEN: EFFECT ON PRIOR ADVERTISING AGENCY AGREEMENTS:** This Agreement supersedes City Contract # 5690 which was executed on July 13, 2011 and which was entered into by the City and Cheyenne Stampede Junior "A" Hockey, LLC, and SeeHear Media, LLC, a Colorado limited liability company, 123 North College Avenue, Suite 120, Fort Collins, Colorado, 80524.

**SECTION ELEVEN:** Any written notices issued by the City, or by Cheyenne Stampede, or by SeeHear, regarding the terms and conditions of this Agreement, or the enforcement, termination, or breach thereof, shall be in writing and shall be hand-delivered or mailed to each of the parties to this Agreement at the following addresses:

Cheyenne Stampede Hockey, LLC  
3303 Forest Drive  
Cheyenne, WY 82001



City of Cheyenne  
ATTN: Kari Kivisto  
Neighborhood Facility  
610 West 7<sup>th</sup> Street  
Cheyenne, WY 82001

SeeHear Media, LLC  
ATTN: Andrew Cronin  
123 North College Avenue, Suite 120  
Fort Collins, Colorado 80524.

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This Agreement is executed this \_\_\_\_ day of \_\_\_\_\_, 2012 by the parties acting through their designated representatives as follows:

City of Cheyenne, Wyoming

By: \_\_\_\_\_  
Richard L. Kaysen, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Carol Intlekofer, City Clerk

Date: \_\_\_\_\_

Cheyenne Stampede Junior "A" Hockey,  
LLC, a Wyoming limited liability company,

By: \_\_\_\_\_  
Mark Lantz

Date: \_\_\_\_\_

SeeHear Media, LLC, a Colorado limited  
liability company,

By: \_\_\_\_\_  
Andrew M. Cronin

Date: \_\_\_\_\_