

EQUIPMENT RENTAL AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
RAPID CITY SUMMER NIGHTS FOR A PORTABLE STAGE

This Equipment Rental Agreement (“Lease”) is made effective as of _____, 2017 (“Effective Date”) by and between the City of Rapid City (“Lessor”), a South Dakota Municipal Corporation, located at 300 Sixth Street, Rapid City, South Dakota 57702, and Rapid City Summer Nights, Inc. (“Lessee”), a South Dakota non-profit corporation, located at P.O. Box 2290, Rapid City, South Dakota 57702.

WHEREAS, the Lessor is owner of an APEX 2024 Portable Stage (the “Stage”) purchased through the City’s Capital Improvements & Vision Fund (the “Vision Fund”); and

WHEREAS, it is explicitly understood between the Parties that the Stage was purchased by Lessor upon application by Lessee to the 2017 Vision Fund, and that the Vision Fund Citizen Committee recommended purchase for Lessee’s use as one of ten projects to receive support monies for citizens and businesses of Lessor’s; and

WHEREAS, it is further explicitly understood that the purpose of this Lease is not to generate rental income for Lessor, but to protect Lessor’s interest in the Stage, should Lessee not be in a position to utilize it for its events within the timeframe described below in this Lease; and

WHEREAS, Lessor is desirous of leasing said Stage to Lessee according to the terms set forth in this Lease.

NOW, THEREFORE, In consideration of the promises and covenants contained herein, the Lessor and Lessee agree as follows:

1. ACCEPTANCE OF EQUIPMENT: Lessee accepts the Stage in its “as is” condition from the manufacturer. Lessor hereby assigns to Lessee (to the extent assignable) all rights Lessor may have to enforce any warranty of the manufacturer or third party regarding the Stage. The Parties agree that each will diligently act, and work with one another, to follow all requirements necessary to avoid conduct resulting in the manufacturer’s warranty becoming null and void. To the extent any such conduct occurs, the remedial measures taken will be determined by which Party, Lessor or Lessee, was in possession of the Stage at the time of such conduct and be the responsibility of that Party.

2. DELIVERY, USE, AND RETURN OF EQUIPMENT: Lessee will take delivery of the Stage and, except as otherwise may be stated in this Lease, be solely and exclusively responsible for all operating expenses of the Stage, including licensure, insurance, storage, maintenance, and repair. Lessee will use the Stage only for lawful purposes and in a careful and proper manner, complying with and conforming to

industry, national, state, and municipal standards, laws, and ordinances. Should Lessee return the Stage to Lessor as more fully set forth in Paragraph 5, below, the same will be returned in good operating condition, reasonable wear and tear excepted.

3. RENT AND TERM OF LEASE: The Lessee agrees to pay to Lessor, as rent for the Stage, the sum of \$1.00, to be paid at full execution of this Agreement as well as other good and valuable consideration regarding care and storage of the Stage, as more fully set forth in Paragraph 2, above. This Lease will be for a term of 5 years from the Effective Date and will not be subject to renewal by either Party. Rather, the Parties agree that ownership, custody, and control in the Stage will revert to either Lessor under Paragraph 5, or Lessee under Paragraph 8, both below.

4. RESERVATION OF TITLE: During the term of the Lease, title of the Stage will remain solely in Lessor's name. Lessor will pay for all costs associated with obtaining title to the Stage. Title may transfer to Lessee under the conditions set forth in Paragraph 8, below.

5. SURRENDER: By this Lease, Lessee acquires no ownership rights in the Stage, save for its option to purchase, set forth below. Upon termination of this Lease, Lessee will return the Stage in good operating condition, reasonable wear and tear excepted. Termination of the Lease prior to expiration of its term will occur in the event the Lessee dissolves as an entity, or no longer has need for utilization of the Stage at its events. Upon such occurrence, delivery of the Stage to Lessor will occur by delivery to such place as Lessor may specify and Lessor will retain all further possession and control.

6. EXCLUSIVE USE BY LESSEE: During the term of this Lease, Lessee will have exclusive use of the Stage for all its events, including all right to lend or sub-lease the Stage on such terms and conditions as negotiated between Lessee and third party. Such exclusive use furthers the intent of Lessor in granting the Vision Funds for purchase of the Stage as more fully set forth in the Preamble above, specifically incorporated herein by reference.

7. INDEMNIFICATION: During the term of this Lease, Lessee will indemnify and hold Lessor harmless against all claims, actions, proceedings, costs, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from use of the Stage. Lessor will not be liable for damage to person or property sustained by Lessee or its agents, employees, volunteers, concessionaires, or invitees resulting from the use of the Stage. Such indemnification will not include any damage or injury resulting from the negligence or willful conduct of Lessor, its employees, agents, or contractors.

8. OPTION: Lessee will have the exclusive option to purchase the Stage at the end of the 5 year term of this Lease. Such option will be exercised by Lessee's notification to

Lessor of intent to purchase the stage. Such notification will be given to Lessor within 30 days prior to the end of the Lease. Such purchase will be in the amount of \$10.00 to be paid to Lessor within 14 business days of exercising the option. The Parties expressly agree that such sum will be adequate consideration for the purchase of the Stage. Lessee will additionally cover the cost of transferring title from the name of Lessor to Lessee.

9. INSURANCE, LIENS, AND TAXES: During the term of this Lease, and during all times when the Stage is under Lessee's custody and control, Lessee will provide and maintain insurance against theft, damage, or destruction of the Stage in an amount not less than the full replacement value of the Stage, and will name Lessor as an additional insured. Lessee will provide proof of insurance to the City Finance Office upon request, and in any event upon each renewal of insurance. Lessee will also provide and maintain commercial general liability insurance insuring against any and all loss or liability for damages, either to person or property, which may result from or occur in connection, the condition, use or operation of the Stage, with such limits not less than \$1 million dollars, and with an insurer within the discretion of and satisfactory to Lessee. Lessee will keep the Stage free and clear of all levies, liens, and encumbrances, and Lessee will pay all charges and taxes (to the extent there are any) which now or hereafter may be imposed upon the use of the Stage.

10. QUIET ENJOYMENT: Lessor covenants and agrees that once the initial rent amount has been paid as of the Effective Date and so long as Lessee continues to perform its obligations under this Lease, Lessee will peaceably hold and enjoy the said Stage without hindrance or interruption by Lessor or by any other person or persons.

11. NOTICES, AND DEFAULT: All notices, demands, and requests to be given hereunder by either Party will be in writing and sent by registered mail and will be deemed properly given if tendered at the last known address for each Party intended to be notified or at such other address as either Party may designate by written notice to the other. All such notices, demands, and requests sent to Lessor will be addressed to the attention of the City Attorney's Office. All such notices, demands, and requests sent to Lessee will be addressed to the attention of its President of the Board of Directors. Should either party be deemed in default of the covenants and obligations under this Lease, 30 days written notice will be sent to the other party to provide time to cure such alleged default. Should such default not be cured within the 30 days following receipt of written notice, the noticing party will have all remedies set forth in this Lease and under the laws of the State of South Dakota.

12. SEVERABILITY: The invalidity of any portion of this Lease will not effect the remaining valid portions thereof.

13. ENTIRE AGREEMENT: This Lease constitutes the entire agreement between the parties hereto, and any change or modification of this Lease must be in writing and executed by the Parties thereto.

14. WAIVER: No delay or failure by either party to exercise any right under this Lease, and no partial or single exercise of that right, will constitute a waiver of that or any other right, unless otherwise expressly provided herein.

15. GOVERNING LAW, VENUE, AND JURISDICTION: This Lease will be construed in accordance with and governed by the laws of the State of South Dakota, and action arising out of the Lease will have venue in Pennington County, South Dakota, and the Seventh Judicial Circuit Court, Pennington County, South Dakota, will have both subject matter and *in personam* jurisdiction over the Parties and the Lease.

16. BINDING EFFECT: The provisions, rights, covenants, and obligations of this Lease will be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns – specifically future and subsequent officers and board members of Lessee, and future and subsequent officers and council members of Lessor.

LESSOR: City of Rapid City

LESSEE: Rapid City Summer Nights, Inc.

Steve Allender
Mayor

Name: _____
Its: _____

ATTEST:

Pauline Sumption, Finance Officer