AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
RAPID CITY SUMMER NIGHTS, INC. TO AUTHORIZ
SUMMER NIGHTS ACTIVITIES FROM 2018 TO 2022

This Agreement is by and between the CITY OF RAPID CITY, a South Dakota
municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701, and RAPID
CITY SUMMER NIGHTS, INC., a South Dakota non-profit corporation, of P.O. Box
2290, Rapid City, South Dakota 57709 (“Summer Nights”).

WHEREAS, in 2008, a group of volunteers began to organize a weekly music and
food event in downtown Rapid City called Summer Nights on Thursday nights from
Memorial Day to Labor Day; and

WHEREAS, since 2008, as the event has grown in size and scope, the City of
Rapid City has worked with Summer Nights to allow and permit the continued use and
occupation of downtown right of way for the event; and

WHEREAS, in 2017 the City adopted a new special event permitting procedure
that issues permits for events in City parks and in City right of way; and

WHEREAS, Summer Nights has submitted a special event permit application for
its 2018 activities; and

WHEREAS, Summer Nights has asked the City to approve the event for five
years to support and enable Summer Nights to enter into extended multi-year contracts
with vendors in order to get better rates and terms; and

WHEREAS, both parties wish to convene each year to discuss the event for the
upcoming year, including any problems, citizen concerns, and/or changes to the event,
and to coordinate the details of each year’s event permit at that time in light of any
changing conditions; and

WHEREAS, the parties now desire to enter into this Agreement to authorize the
operation of Summer Nights within the downtown Rapid City right of way for 2018 to
2022; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual
agreements to writing.

NOW, THEREFORE, it is agreed as follows:

1. Recitals. The recitals set forth above constitute an integral part of this
Agreement and are incorporated herein by this reference as if fully set forth herein as
agreements of the parties.
2. **Special Event Permits.** Both parties agree that a special event permit from the City is necessary to conduct the Summer Nights events in the future. Summer Nights agrees to submit special event permit applications to the City on an annual basis, in compliance with the timelines required by the special event permit, including any application information or supplemental information required by City staff as part of the application. City agrees that it will issue Summer Nights a special event permit for each year from 2018 to 2022 to conduct an event on downtown Rapid City right of way on Thursdays from Memorial Day to Labor Day.

As for the individual terms of each special event permit, including the location of the event and the (setup to cleanup) time of event, the parties agree that these terms will be decided on an annual basis as part of the special event permit application and issuance.

3. **Insurance.** Summer Nights shall purchase and maintain commercial general liability insurance policy for each occurrence of injury or damage in the minimum amount of One Million Dollars ($1,000,000) and an aggregate limit of not less than Two Million Dollars ($2,000,000), as well as alcohol liability insurance with a limit of One Million Dollars ($1,000,000). Any policy shall list the City of Rapid City, its officers, employees and agents as an additional insured. Summer Nights shall provide City with a certificate of insurance reflecting these policy requirements at the time of submitting its annual permit application.

4. **Liability.** Summer Nights expressly assumes all risks incident to or in connection with the Summer Nights activity. Any property damage or bodily injury arising out of or in connection with the permitted activity shall be the sole responsibility of Summer Nights. Summer Nights agrees to and shall indemnify, defend and hold the City harmless from and against all losses, liabilities, damages, costs, expenses including litigation costs and reasonable attorney’s fees, judgments or settlements whatsoever incurred by the City resulting from any claim, demand, action, cause of action or suit arising from or relating to the negligent or intentional acts or omissions of Summer Nights and its officers, volunteers, employees, vendors, agents, contractors, subcontractors, and others acting on behalf of Summer Nights.

5. **Picnic Tables.** As part of its events, City agrees to allow Summer Nights to borrow 30 picnic tables belonging by City and transport the picnic tables to and from the event using volunteers and their own vehicles. Prior to such transportation, Summer Nights agrees to provide City with proof of drivers’ licenses for these volunteers who are driving the picnic tables as well as proof of insurance coverage of this activity, on or before such transportation occurs. Summer Nights has a continuing obligation to provide City with updated and/or additional information about volunteer drivers’ licenses and insurance coverage throughout the term of any annual special event permit.

6. **Compliance with Special Event Permit.** Summer Nights agrees to comply with the terms of any special event permit issued by City. If Summer Nights fails to comply with any provisions in any special event permit issued by City, the City may
terminate this Agreement and/or deny future special event permit applications submitted by Summer Nights.

7. **Consideration.** The parties agree that Summer Nights’ obligations within this Agreement are good and sufficient consideration for the City’s promise to permit the special event for a period from 2018-2022. Both parties stand to benefit from this Agreement, and this constitutes sufficient consideration for the promises contained in this Agreement.

8. **Effective Date.** This Agreement shall be effective upon execution by both parties.

9. **Time of Essence.** Time is of the essence of this Agreement.

10. **Amendments.** This Agreement may only be amended by a written document duly executed by all parties.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

12. **Counterparts.** This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

13. **Headings.** The headings and numbering of the different paragraphs of this MOU are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

**EFFECTIVE DATE:** In witness where, the parties hereto have executed this agreement this ________ day of __________________________, 2017.
RAPID CITY SUMMER NIGHTS, INC.

__________________________
Sandra D. Schwan, President

STATE OF SOUTH DAKOTA    )
COUNTY OF PENNINGTON    )

On this the _____ day of ________________, 2017, the undersigned officer, personally appeared ____________________, who acknowledged ________________, to be the President of Rapid City Summer Nights, Inc., and as such President, being authorized to do so, executed the foregoing document on behalf of Rapid City Summer Nights, Inc.

IN WITNESS WHEREOF, my signature and official seal appear below.

_________________________________
(seal) Notary Public, State of South Dakota
My Commission Expires: _____________
CITY OF RAPID CITY

ATTEST:

________________________________________

Mayor

________________________________
Finance Officer
(SEAL)

State of South Dakota )
SS.
County of Pennington )

On this the _____ day of ________________, 2017, before me, the
undersigned officer, personally appeared Steve Allender and Pauline Sumption, 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, my signature and official seal appear below.

______________________________
Notary Public, State of South Dakota
My Commission Expires: ____________