

**MEMORANDUM OF AGREEMENT BETWEEN
THE CITY OF RAPID CITY**

and

NEHEMIAH LARIMER MEMORIAL, INC.

This agreement is by and between the City of Rapid City, South Dakota, a municipal corporation (hereinafter referred to as City), and Nehemiah Larimer Memorial, Inc., (hereinafter "NLMI"), a South Dakota domestic non-profit corporation in Rapid City, South Dakota.

PREAMBLE

The subject of this agreement is a portion of city parkland located in Sioux Park, generally located southeast of the intersection of Sheridan Lake Road and Canyon Lake Drive. The Rapid City Parks and Recreation Advisory Board has approved the use of the described area for development of a public slacklining area.

AGREEMENT

The City and NLMI agree to develop a public slacklining area (hereinafter referred to as Slackline Park) located in Sioux Park, legally described as follows:

TRACT 10; TRACK 10A LESS LOT H1, RAPID CITY GREENWAY
TRACT, SECTION 3, T1N, R7E, BLACK HILLS MERIDIAN, RAPID CITY,
PENNINGTON COUNTY, SOUTH DAKOTA

The Slackline Park will consist of a beginner balance park approximately 30'x50' in size near the existing playground that will have balance type features and playground surfacing underneath open to the public. A more advanced area will consist of a system of posts and designated existing trees strategically placed throughout an expanse of greenspace and trees north of the bike path for the public to bring their own equipment and setup based on their own skill level.

Both the City and NLMI agree to the following regarding the approved Slackline Park:

1. Slackline Park Elements. The City shall construct all components of the Park according to City design and construction standards. NLMI shall contribute all costs for the planning and design of the elements to be installed and constructed, including signage and site amenities.

2. Term. The term of this agreement is from the date of execution to December 31, 2017, or upon completion of the Slackline Park as determined by the City and NLMI, whichever is earlier.

3. Construction. NLMI will contract with Slackline Industries, Inc. to plan and design the Park, and NLMI agrees to order and pay for all materials and related elements for the Slackline Park. NLMI agrees to arrange for delivery of the materials and elements to the City at its own expense. The City shall complete and/or oversee the installation and construction of the Slackline Park elements at its own expense. Both parties will agree upon any substantial additions or modifications to the Slackline Park or to the plan submitted by NLMI and approved by the City. All costs expected and unexpected will be paid by NLMI, except for costs to install and construct the Slackline Park, unless other arrangements are made with the City.

4. Maintenance Responsibilities. Rapid City Parks and Recreation will be responsible for all maintenance of the Slackline Park including the restoration of areas disturbed during park improvements from initial construction of the Park or any subsequent disruptions related to the Slackline Park.

The parties agree to cooperate to address emergency situations resulting from vandalism or acts of nature that may require immediate attention and intervention.

5. Specifications for Improvements. All improvements of the Slackline Park will be in accordance with any and all City, State, and Federal rules and regulations. Construction of improvements shall follow the City of Rapid City Standard Specifications for Public Works Construction (2007 Edition), as currently revised. The City will be responsible for seeking and obtaining any City approvals and permits required for the improvements of the Slackline Park.

6. Ownership. All improvements which are constructed as part of this Agreement will be owned by the City of Rapid City. The City will have full authority over the type of use allowed in the Slackline Park.

7. Insurance. City will insure the Slackline Park at all times during and after construction. If NLMI obtains any liability insurance policies, the policies shall name the City as an additional insured for the life of this agreement, and any entity securing liability insurance shall furnish to City evidence of the same by a certificate of insurance.

8. Indemnification. NLMI agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including

reasonable attorney fees, arising out of or in connection with the conduct by NLMI, its designees, and/or its contractors.

9. Notice to Terminate. If, at any time, the City deems the Slackline Park a blight and/or not up to City standards for a park area, or if it deems NLMI to be in default under this agreement, or City identifies an alternate public use for the location of the Slackline Park, the City will provide NLMI with notice of the defect/default and give NLMI ninety (90) days to comply with the terms of this agreement or correct the defect. If the defect/default is not corrected within 90 days, the City may terminate this agreement, dismantle, take out, or shut down the Slackline Park, and/or exercise any rights it has under the law.

10. Independent Contractor. Nothing contained herein shall be construed as creating a partnership or joint venture between City and NLMI, nor construed as making NLMI anything other than an independent contractor of City. NLMI shall have no right or power to act for City other than as contemplated in this agreement or otherwise expressly authorized by City.

11. Costs and Expenses. Each party shall pay all of its own costs and expenses incurred in connection with performance of its duties hereunder.

12. Waivers. No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

13. Consideration. The parties agree that the City's act of allowing NLMI to construct the Slackline Park on city parkland constitutes sufficient good and valuable consideration for NLMI's promises made within this Agreement and for the execution and performance of this Agreement.

14. Miscellaneous Provisions.

a. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard for its conflict of laws provisions. The parties agree to bring any suit at law or equity only in Seventh Judicial Circuit Court in Pennington County, South Dakota.

b. **TITLES AND CAPTIONS.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

c. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between and among the parties and supersedes any prior

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the _____ day of _____, 2015, 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, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)