

**LEASE AGREEMENT BETWEEN
RAPID CITY ARTS COUNCIL, INC. AND CITY OF RAPID CITY**

1. **Parties.** Lease made as of the ____ day of _____, 2005, by and between the City of Rapid City, lessor, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as "City", and the Rapid City Arts Council, Inc., lessee, a non-profit corporation, organized under the laws of the State of South Dakota, hereinafter referred to as "Lessee".

For and in consideration of the mutual covenants herein contained, the City hereby leases to Lessee and Lessee hires and takes from the City the property hereinafter described as the demised premises subject to the terms, conditions, and stipulations herein provided.

2. **Demised Premises.** The demised premises leased to the Lessee shall consist of approximately seventeen thousand five hundred square feet (17,500) of area within the building located at 703 Kansas City Street, Rapid City, South Dakota, the same being located upon portions of the following described real property:

Lots One, Two, Three, Four, and Five in Block One Hundred
Three (103) of the Original Townsite of the City of Rapid City,
Pennington County South Dakota.

Lessee shall not have the use of the parking area for the building, the use of which is reserved for the sole and exclusive use of the City.

3. **Use.** Lessee may use the demised premises, including the common areas, for any legal purpose.
4. **Non-Discrimination.** Lessee agrees that in the operation and use of the premises, it will not on the grounds of race, color, creed, national origin, disability, age, or sex, discriminate or permit discrimination against any person or group of persons in any manner.
5. **Rent.** Lessee shall pay to the City before occupying the demised premises the sum of One Dollar (\$1.00). Such sum shall be in addition to such other consideration as Lessee provides by virtue of its occupancy and upkeep of the demised premises.
6. **Agreement to Occupy.** As part of the consideration for the execution of this lease, Lessee agrees to occupy the demised premises and to conduct its business there from insofar as may, in good faith, be practical.
7. **Subleasing.** Lessee agrees not to assign, lease, or sublease the demised premises without the express written permission of the City.
8. **Time of the Essence.** Time is of the essence of each and every provision hereof.

9. **Term.** The term of this lease shall for one (1) year commencing on the date last written below. Should either party choose to terminate this lease before the running of the one year period, the terminating party shall notify the other party in writing ninety (90) days in advance of such desired termination of lease. Upon such proper notice to terminate said lease, said lease shall be terminated.
10. **Occupancy and Acceptance.** By entering into and occupying the demised premises, Lessee shall be deemed to have acknowledged that the demised premises are in good order and repair.
11. **Signs.** Lessee may erect, place, or maintain only permitted on-premise signs upon the demised premises.
12. **Installation and Maintenance of Fixtures.** Lessee shall furnish and install upon the demised premises trade fixtures, light fixtures, floor coverings, equipment, and furnishings as shall be proper for the conduct of the business.

Items to be furnished and installed by Lessee shall be installed as expeditiously as reasonably possible, shall be of first quality and commensurate in appearance and in keeping with the demised premises, and shall be maintained in good order and repair by Lessee, at its expense, during the term of this lease.

13. **Alterations, Changes, and Additions.** No structural changes, alterations, or additions shall be made by Lessee to the demised premises without the express written consent of the City. Any such structural changes, alterations, or additions to or on the demised premises made with such consent shall remain for the benefit of and become the property of the City unless otherwise provided in such written consent.
14. **Defects, Defective Conditions, Wind, and Acts of Third Parties.** The City of Rapid City shall not be liable to Lessee for any damage or injury to Lessee or Lessee's property occasioned by any defect of plumbing, heating, air cooling, air conditioning equipment and ducts, electrical wiring or installation thereof, gas pipes, steam pipes, or from broken steps, or from the backing of any sewer pipe, or from the bursting, leaking, or running of any tank, tub, washstand, toilet, or waste pipe, drain, or any other pipe or tank in, on, or about the demised premises, or from the escape of steam or hot water from any boiler or radiator, or for any such damage or injury occasioned by water being on or coming through the roof, stairs, walks, or any other place on or near the demised premises unless the City neglects or fails to make necessary repairs required of it to be made under the terms of this lease after receipt of written notice thereof from Lessee, or for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, or for any such damage or injury caused by wind or by the act, omission, or negligence of co-tenants or of other persons, occupants of the same building or of adjacent buildings or contiguous property.

All claims against the City for any damage or injury as provided in the preceding paragraph of this section are hereby expressly waived by Lessee, except those claims

occasioned by the City's neglect or failure to make repairs for which the City is responsible under this lease, after due written notice thereof by Lessee.

For the purposes of this section, Lessee shall include Lessee, its agents, sublessees, licensees, permittees, assigns, guests, and bailors.

15. **Repairs.** The City shall repair any damage to the demised premises occasioned by termites, dry rot, or fungus, and keep and maintain the roof and exterior walls of the demised premises in good repair at all times, and will further keep and maintain all underground plumbing in good order and repair, but not including the repair of plumbing stopped up by reason of foreign matter introduced into the plumbing fixtures. There shall be no obligation on the part of the City to make any of the repairs required in this section unless and until Lessee gives to the City at least ten (10) days written notice, advising the City of the necessity of the repair or repairs, and the City shall not be liable to Lessee for any loss or damage caused by the failure of the City to make any repairs required of it hereunder unless the City, on receipt of such notice, shall fail to proceed with due diligence to make such repair or repairs. The phrase "exterior walls" as herein used shall not be so construed as to require the City to make repairs to the interior surfaces thereof. Except as provided herein, Lessee shall not call on the City to make any improvements or repairs whatsoever in or on the demised premises.

Lessee shall, at its own expense, keep and maintain all of the demised premises, including but not limited to walls, floors, doors, counters, and other fixtures, in good order, condition, and repair, and in compliance with all laws and regulations applicable thereto, during the entire term of this lease, except for those repairs required of the City to be made and as provided in the first paragraph of this section.

16. **Maintenance.** The City shall maintain and repair all sidewalks, including cleaning, snow and ice removal, cost and expenses of planting, replanting, and replacing flowers and landscaping. Lessee shall be solely responsible for all utility costs, security alarm costs, janitorial costs, liability insurance, and administration of sublessees. The City will maintain the sidewalks and be responsible for garbage pickup, and undertake major repairs and capital improvements as the City, in its sole discretion, deems necessary.
17. **Waste and Nuisance Prohibited.** During the term of this lease, lessee shall not commit, or suffer to be committed, any waste or nuisance on the premises.
18. **Insurance.** Lessee shall at all times during the term of this lease, at its own expense, maintain in force a policy or policies of insurance, written by responsible insurance carriers, insuring Lessee against liability or injury or death of persons or loss or damage to property occurring on or about the demised premises. The liability under any such insurance shall not be less than One Million Dollars (\$1,000,000.00) per occurrence or Two Million Dollars (\$2,000,000.00) aggregate. Lessee shall furnish the City with a certificate of insurance acceptable to the City. Such certificate shall be attached to this lease along with a statement generally describing the coverage therein contained. The said

insurance shall include the City as an additional insured. Additionally, Lessor shall maintain umbrella insurance on the premises.

19. **Surrender of Premises.** At the expiration of the tenancy hereunder, whether by lapse of time or otherwise, Lessee shall quit and surrender the demised premises in as good a condition as it was in at the time of entry thereon by Lessee, except for reasonable use and wear thereof, acts of God, or damage by casualty beyond the control of Lessee, and on vacating shall leave the demised premises free and clear of all rubbish and debris.

In the event Lessee remains in possession of the leased premises after the expiration of the tenancy hereunder and without the execution of a new lease, Lessee shall be deemed to be occupying said premises as Lessee from month to month subject to all other conditions, provisions, and obligations of this lease insofar as the same are applicable to a month to month tenancy.

20. **Indemnification of Lessor.** Lessee shall serve a written notice on the City at least ten (10) days prior to permitting any work involving repairs, improvements, construction, and the like to be commenced in or on the demised premises.

Lessee shall indemnify, defend, and hold the City harmless and shall indemnify and defend the premises herein demised and all improvements placed thereon against all claims, liens, claims of lien, demands, charges, encumbrances, or litigation arising directly or indirectly out of or by reason of any work or activity of Lessee on the demised premises, and shall work with or within thirty (30) days after the filing of any lien for record fully pay and satisfy the same, and shall reimburse the City for all loss, damage, and expense, including reasonable attorney's fees, which it may suffer or be put to by reason of any such claim of lien, demands, charges, encumbrances or litigation.

Lessee shall indemnify, defend, and hold the City harmless and shall indemnify and defend the demised premises against any cost, liability, or expense arising out of any claims of any person or persons whatsoever by reason of the use or misuse of the demised premises by Lessee or any person or persons holding under Lessee, shall indemnify, defend, and hold the City harmless against any penalty, damage, or charge incurred or imposed by reason of any violation of law or ordinance by Lessee or any person or persons holding under Lessee, against any costs, damage, or expense arising out of the death of or injury to any person or persons holding under Lessee.

21. **Lessor's Right of Inspection.** The City shall have access to the demised premises, and each part thereof, during Lessee's regular business hours for the purpose of inspecting the same, making repairs, and posting notices which the City may deem to be for the protection of the City or the demised premises.
22. **Expenses of Enforcement.** Should either party incur any expense in enforcing the provisions of this lease, the party in default shall pay to the other all expenses so incurred, including reasonable attorney's fees.

23. **Notices.** All notices or demands of any kind which the City may be required or may desire to serve on Lessee under the terms of this lease may be served on Lessee by leaving a copy of such demand or notice, or by mailing a copy thereof by first class mail to Lessee at the demised premises or at such other address or addresses as may from time to time be designated by Lessee in writing to the City. All notices and demands from Lessee to the City may be similarly served on the City at 300 Sixth Street, Rapid City, South Dakota, or at such other address as the City may in writing designate to Lessee.
24. **Neat Appearance.** Lessee shall maintain its leased area in a neat and businesslike appearance. No parcels, packages, bundles, baggage, or other items of cargo received, stored, or held for shipment shall be stored or kept in a place visible from any area commonly and customarily open to the public.
25. **Default.** If either party to this lease is in default under any provision of this lease and such default shall continue to exist after receipt by the defaulting party of a thirty (30) day written notice, the other party may terminate this lease and if the City is the defaulting party, the Lessee may surrender possession of the leased premises to the City and if the Lessee is the defaulting party, the City may take possession of the leased premises. Such termination of this lease shall be without prejudice to the right of recovering damages against the defaulting party for breach of this lease.
26. **Termination.** The lease granted by this agreement shall be terminable for cause by either party upon a thirty (30) day written notice.
27. **Damage or Destruction of Premises.** If the premises are damaged or destroyed by fire or other causes, the City shall be under no obligation to repair or replace. Should the City reconstruct the damaged or destroyed premises within two (2) years of the execution of this lease and agree to again lease the premises, Lessee shall be provided the right of first refusal on a new lease. If the premises become unusable for the use intended for a period to exceed thirty (30) days, this lease or any renewal thereof shall terminate unless otherwise agreed to by the parties.
28. **Liens.** Lessee shall not allow the premises to become subject to liens of any kind, and the attachment of a lien to the premises shall be grounds for termination.
29. **Relationship.** This lease does not create any employee/employer relationship between the City of Rapid City and the Rapid City Arts Council, Inc., its agents or employees.
30. **Eminent Domain.** The City and Lessee agree that if the demised premises is taken by eminent domain or by conveyance in lieu thereof, or in connection therewith, this Lease shall terminate upon such taking or conveyance, as the case may be, and the Lessee shall have no right, title, or interest of any kind or character in and to any award or compensation paid for such taking or conveyance.
31. **Obligation to Comply with Applicable Laws.** Lessee, at its sole expense, shall comply promptly with all laws, orders, and regulations of federal, state, county, and municipal

authorities and with any direction of any public officer pursuant to law which shall impose any duty upon the City or Lessee with respect to the demised premises. Lessee, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business with the terms of this Lease, or for the making of repairs, alterations, improvements, or additions, and the City, where necessary, will join with the Lessee in applying for all such permits or licenses.

32. **Integration.** The parties agree that this writing constitutes the entire Lease between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein.
33. **Waiver.** Waiver by the City, or the failure of the City to take action with respect to breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same, or any other term, covenant, or condition therein contained. The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach by lessee of any term, covenant, or condition of this lease, other than the failure of the Lessee to pay the particular rental so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent.
34. **Parties Bound.** The covenant and conditions herein contained shall, subject to the provision as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assignors or all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.
35. **Choice of Law and Venue.** The parties agree that the terms of this lease shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
36. **Remedies Cumulative.** All remedies hereinbefore conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

IN WITNESS WHEREOF, the parties have executed this lease at Rapid City, South Dakota, this _____ day of _____, 2005.

CITY OF RAPID CITY

By: _____
Jim Shaw, Mayor

Finance Officer

RAPID CITY ARTS COUNCIL, INC.

By: _____
Its: _____

On this the ____ day of _____, 2005, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, 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

(SEAL)

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

On this the ____ day of _____, 2005, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Rapid City Arts Council, Inc., and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Rapid City Arts Council, Inc. by himself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Prepared By: CITY ATTORNEY'S
OFFICE