

**LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND THE ALLIANCE OF TRIBAL TOURISM ADVOCATES**

For and in consideration of the mutual promises and agreements contained herein, the City of Rapid City (City), a municipal corporation, agrees to lease to Alliance of Tribal Tourism Advocates (ATTA), a non-profit organization, a specified area to operate a powwow garden and art market, subject to the following terms and conditions:

1. Consideration. The City hereby leases to ATTA the below described premises ("Premises") for the sum of One Dollar (\$1.00) per year and other good and valuable consideration, including but not limited to, maintenance of general grounds, construction of incidental improvements and anticipated construction of more substantial improvements, for use as a powwow garden and art market open to the citizens of the City. Said sum is payable to the City of Rapid City on or before the first day of January of each succeeding year.

2. Term and Renewal. The initial term of this agreement is **from October 1, 2009 ("Effective Date") to May 31, 2013**. Thereafter, ATTA shall have the option to renew the lease for nine (9) additional successive terms of ten (10) years each under the same terms and conditions set forth herein unless mutually agreed otherwise between the parties.

3. Premises. The Premises leased by the City to ATTA are legally described as follows:

The following property located in Section Thirty-six (36), Original Town of Rapid City, Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, South Dakota:

Lots One (1) through Sixteen (16) and the West Half (W $\frac{1}{2}$) of Vacated Second Street abutting Lot One (1) and the East Half (E $\frac{1}{2}$) of that portion of vacated Third Street abutting Lot Sixteen (16), and the North Half (N $\frac{1}{2}$) of the vacated alley abutting said Lots;

Lots Twenty-five (25) through Thirty-two (32) and the South Half (S $\frac{1}{2}$) of vacated Second Street abutting Lot Thirty-two (32) and the South Half of the vacated alley abutting Lots Twenty-five (25) through Thirty-two (32);

Lots Twenty-three (23) through Twenty-four (24) and half of the South Half of the vacated alley abutting said lots;

Lots Twenty-one (21) through Twenty-two (22) and the South Half of the vacated alley abutting said lots;

The North Half (N½) of Lots Seventeen (17) through Twenty (20) and the South Half of the vacated alley abutting said lots;

The South Half (S½) of Lots Seventeen (17) through Twenty (20).

4. Surrender of Premises. ATTA agrees to surrender the Premises, or a part thereof, in the event the demand is made by the United States government. They further agree to abandon the Premises, or a part thereof, whenever ordered to do so by a court of law or whenever the City is ordered to terminate said agreement by an order of any court.

5. Use. ATTA shall have exclusive use of the Premises during the lease period for the purpose of operating a powwow garden and art market.

6. Maintenance. ATTA agrees to maintain the Premises and any improvements which are located on the property. ATTA agrees to repair or replace any damage to the property and generally maintain the Premises in a suitable condition. ATTA agrees to be responsible for policing the Premises and to pick up and make ready for collection of all trash, debris, and waste material of every nature (including mowing of weeds), resulting from the use of the Premises by itself or any spectators in attendance at such Premises. ATTA agrees to provide its own trash receptacles for use at the Premises. ATTA also agrees to place all collected trash, debris, and waste in a designated location for removal by the City of Rapid City.

7. Mowing. ATTA shall maintain any lawn areas and landscaping, once the same are established, on a regular basis, in accordance with good and customary maintenance practices. If ATTA fails to properly maintain any lawn areas, the Parks Division Manager can cause them to be mowed at the rate established by them to cover the City's cost including direct labor costs and any indirect costs for each man and machine used, provided that the Parks Division Manager: (1) determines the need for mowing; (2) gives ATTA three (3) days notice of his intent to do so if ATTA fails to mow; and (3) determines he has the available manpower and equipment. Should the Parks

Division Manager not have the available manpower and equipment, he can arrange for a private contractor to mow at the expense of ATTA.

8. Construction. The parties acknowledge that at the inception of the initial term of this lease, ATTA is in the process of organizing and developing the Premises to be utilized as a powwow garden and art market. At the inception of the initial term of this lease, no improvements presently exist on the Premises. It is anticipated that on completion of the complex, ATTA will have constructed multiple permanent improvements located on the Premises. The parties acknowledge that any permanent improvements placed on the property will require a review pursuant to SDCL 11-6-19. ATTA will be responsible for handling the application and any required paper work and/or exhibits required to complete the review. Such improvements will be made with prior approval of the plans by the Director of Parks and Recreation (DPR) or his designee. Any construction of buildings or other improvements at or on the Premises, including those that may be located in the flood plain, shall be in conformity with the regulatory codes of the city and subject to the approval of the Director of Parks and Recreation or his designee. The parties agree to renegotiate the terms of this lease in good faith as to ownership or incidental rights relative to the substantial improvements made or anticipated from time to time and expect that such renegotiation will occur at any time at which a review may be required under SDCL § 11-6-19 (review process).

9. Expense. The City of Rapid City shall assume no expenses as a result of this lease or any of the operations of ATTA. ATTA agrees to pay its own administration expenses, including but not limited to, lights and electricity, grounds crew, office supplies, miscellaneous equipment, and secretarial fees. ATTA agrees that the electric and water utilities will be metered in the name of and billed directly to ATTA and that all expenses incurred by it shall be paid within thirty (30) days of due date.

10. Termination. If ATTA shall dissolve or abandon the use of the Premises, this lease shall be terminated and ATTA shall have no further rights hereunder. Discontinuation of use of all or part of the Premises, for any amount of time for maintenance, repair or rehabilitation purposes of the grounds shall not be deemed as abandonment. The parties shall have the right to terminate the lease upon 60 days written notice in the event of substantial failure of the other party to perform in

accordance with the lease terms. Notwithstanding this provision, the lease will not be terminated for substantial failure if the party receiving such notice cures such failure within thirty (30) days of the notice being sent. If the party in breach has attempted to diligently cure the breach, to the extent such breach cannot be reasonably cured within thirty (30) days, the other party may grant such additional time to cure as it deems appropriate, but is under no obligation to do so.

If ATTA has not began construction of the improvements contemplated in paragraph 9 of this lease, or entered into a contract for construction of such improvements, within two (2) years of May 31, 2010, the City may terminate this lease at any time from that date until such time as a contract for construction has been entered into.

11. Liability. ATTA agrees that the City shall be held harmless from any and all liability arising from any operation or use under this lease of the described Premises by it or its agents or employees or any other person using the Premises. ATTA further agrees to defend the City against any and all claims arising from the operation or use under this lease of the described Premises by it or its agents or employees or any other person using the Premises. ATTA agrees to purchase and maintain bodily injury and property damage insurance for each occurrence of injury or damage in the minimum amount of One Million Dollars (\$1,000,000) with participant's injury liability of at least Five Hundred Thousand Dollars (\$500,000). The City shall be named an additional insured in said policy or policies and the ATTA shall furnish to the City evidence of insurance by a certificate of insurance of required coverage.

12. Assignment or Subletting. This lease shall not be assigned, nor the Premises sublet, by ATTA except on written consent and approval of the City.

13. Concession, Advertising, and Naming Rights. ATTA shall have the right to operate concessions for the sale of beverages, food, programs, and other items usually sold in the public parks. In addition ATTA may sell, or authorize the sale, of arts, crafts and other items consistent with the use of the Premises as a powwow garden and art market. ATTA shall have the right to sell advertising space on the inside of the fences enclosing the powwow garden and art market and all revenue derived

from concessions and advertising shall belong to ATTA. ATTA also agrees to be responsible for cleaning and maintaining the concession area.

ATTA and City shall jointly hold all naming rights for the facilities and Premises and any naming of fields, buildings, improvements or areas shall be by mutual agreement. Consent sought by one party from the other shall not be unreasonably withheld.

14. City Authority. All matters pertaining to the terms of this lease shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota.

15. Change of Contacts and Officers. ATTA agrees to notify the Director of Parks and Recreation of any changes in the officers of ATTA within thirty (30) days after said change. Attached to and incorporated by reference into the terms of this agreement are the names and addresses of the current office holders of ATTA.

16. Non-Discrimination. ATTA shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by local, state, or federal laws. ATTA further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

17. Relationship Between the Parties. This lease does not create any employee/employer relationship between the City of Rapid City and ATTA, its agents or employees.

18. Integration. The parties agree that this agreement constitutes the entire understanding between them and that there are no other oral or collateral leases or understandings of any kind or character except those contained herein.

19. Savings Clause. Should any of portions of this Lease be declared void, the remainder of the Lease shall remain in full force and effect.

20. Choice of Law. This Lease shall be governed by the laws of the State of South Dakota and any action to enforce the terms of this Lease shall be venued in the 7th Judicial Circuit, Pennington County, South Dakota.

Dated this _____ day of _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

ALLIANCE OF TRIBAL TOURISM
ADVOCATES

By: _____

Its: _____

State of South Dakota)

SS.

County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer, personally appeared **Alan Hanks** 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
My Commission Expires:_____

(SEAL)

State of South Dakota)
 SS.

County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of the Alliance of Tribal Tourism Advocates, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public, South Dakota
My Commission Expires:_____

(SEAL)