

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF RAPID CITY,
RAPID CITY PERFORMING ARTS COALITION,
AND THE RAPID CITY AREA SCHOOL DISTRICT**

WHEREAS, the City of Rapid City (hereafter "City") has allocated funds from its 2012 Program for the construction of a performing arts facility; and

WHEREAS, the Rapid City Area School District 51-4 (hereafter "School District") has an existing theatre School Facility located at 615 Columbus Street, currently referred to as Dakota Middle School that could be remodeled for use by the Performing Arts Coalition and the School District; and

WHEREAS, the Rapid City Performing Arts Coalition (hereafter "Coalition") is in the process of identifying a location for the construction of a performing arts facility to be funded through the 2012 Program and private donations; and

WHEREAS, the Parties recognize it is in their mutual best interest to maximize usage of existing space and to make the most expeditious use of taxpayer dollars.

ACCORDINGLY, PARTIES AS FOLLOWS:

1. The City and the Coalition agree to jointly fund the renovation of a Performing Arts Center (hereafter also called the Facility). The Parties acknowledge that the construction of the Facility will be in accordance with SDCL Chapter 5-18 governing State Bid Law.
2. The City shall contribute the \$3.25 million identified in the 2012 Fund to the construction of the Facility.
3. The School District will provide the existing theatre space at School Facility and the potential for a reasonable amount of adjacent land necessary for the construction of the Facility in an amount to be determined by the School District in consultation with design professionals.
4. The Parties agree that the Coalition's share of the cost to construct the Facility will be the difference between the City's and School's contributions under Paragraph 2 and 3 of this Agreement and the total cost of constructing the Facility. The Parties acknowledge the amount of money the Coalition can contribute to the cost of constructing the Facility will be limited to the amount of money the Coalition is able to obtain through fundraising. The Parties agree that the common goal is to build the Facility with the amenities listed in section 11 of this agreement to the greatest scope and size as allowed by budget limitations. The Parties further acknowledge that the total cost of constructing the Facility cannot exceed the combined funds available to the Parties at the time the bid for construction of the Facility is awarded. If the Coalition has been unable to raise sufficient funds to cover the difference between the City and School contribution and the total cost of constructing the Facility, the Facility will need to be reduced in scope or the Coalition

swill need to identify alternative source of funds that will need to be available prior to the sbid for construction being awarded.

5. A five member Board of Directors will be established to set policies and procedures for the management and operation of the Facility. One member shall be appointed by the City, two members shall be appointed by the School District, and two members shall be appointed by the Coalition. At the first meeting of the Board of Directors, the length of the terms of the individual directors shall be determined by a random drawing to establish staggered terms. The Directors appointed by each group shall serve different terms. Two Directors shall be assigned two year terms. Two Directors shall be assigned three year terms. The City representative will be appointed annually for a one year term. Thereafter, each Director shall be appointed for a three year term with the exception of the City Director which will remain a one year term. Should a vacancy occur in a Director's position, a replacement shall be appointed to serve the remainder of the term by the group that originally appointed the Director vacating his or her position. Three Directors, one from each entity, shall constitute a quorum for the purposes of conducting business.

Further, the scope of responsibility and authority of the Directors will be determined by appropriate agreement between the Parties through either bylaws or other agreement. Said bylaws or agreement will defines the scope of responsibility and authority of the Directors. The bylaws or other agreement will be agreed to in a future document and is subject to the agreement of all Parties.

6. The Parties agree that the Facility shall be the existing theatre on the Dakota Middle School campus. The Parties further agree they will consider all potential architectural and engineering recommendations that are the most cost effective to build and operate, while still meeting the needs of the Parties. However, the decision for the architectural and engineering recommendations will be the ultimate authority of the School District.
7. The School District shall lease the Facility to the Coalition for a period of 25 years for one dollar per year subject to renewal for an additional ten years if agreed upon by the Parties. In the event the Coalition should cease to exist, abandon its use of the Facility or breach the terms of this lease, the Facility shall revert to the School District, subject to the City's rights under this MOU, which shall continue notwithstanding the absence of the Coalition. In the event the Facility reverts to the School District, the City shall have the right to either take over the operation of the Facility or to assign the operation of the Facility to another entity on the same terms contained herein. Any such assignment is subject to the concurrence of the School District and the School District's concurrence will not be unreasonably withheld.
8. The annual Master Calendar shall be adopted as soon as feasible, but in no event later than December 1 of each year for the following fiscal year (fiscal year shall be July 1 through June 30) by the Board of Directors designating times for School District and the Coalition events. While the building remains a school, the School District and the Coalition agree that time will be allocated between the two Parties. The Parties agree that all Schedule Requests from School District and the Coalition will receive equal

consideration, that no single member will be given scheduling priority over another, and that the final schedule is the sole determination of the School District so long as the Facility is operated as a school facility. The Coalition and the School District shall be given priority and shall be placed on the schedule prior to the review and schedule of requests by the community at large or touring groups. Other facilities may be utilized by either one of the partners.

9. The Parties agree the School District and the Coalition shall equally share all operation maintenance and upkeep expenses associated with the Facility so long as the Facility is a shared facility. In the event either party uses the Facility to a significantly greater extent than the other, the operating expenses would be shared in accordance with the usage of the Facility. The School District shall be responsible for the management of the facility in accordance with policies and procedures adopted by the School District with input from the Board of Directors.
10. The School District shall retain all of the proceeds from the sale of tickets and concessions during times allocated to the School District. The Coalition shall retain all of the proceeds from sale of and concessions during times allocated to the Coalition events. Should the City bring in an event, the City shall retain all of the proceeds from sale of tickets and concessions, but must pay the adopted rental fee schedule set by the Board of Directors. The Parties recognize that the Coalition may promote or sponsor events such as touring groups or third party fundraising events. In such a case, the revenues derived from those events shall be retained by the Coalition, but the Coalition will be required to pay the adopted rental fee schedule set by the Board of Directors. Any third party using the facility shall be entitled to the proceeds from the sale of tickets however it shall pay the adopted rental fee set by the Board of Directors. The founding partners of the Coalition shall not exceed a total of seven members.
11. The City, the Coalition, and the School District agree to jointly interview and participate in the selection of a design team and architect with the ultimate decision in the event the Parties are unable to agree by the School District. The Parties agree that the Facility must have adequate space and function to reasonably accommodate the current and future anticipated needs of the Parties. In that regard, the acknowledge that programming needs, work, and cost analysis previously have been undertaken and will be considered. It is anticipated that the Facility will include, as allowed by budget limitations the following principal components:
 - A theatre, with the seating based on recommendation of design professionals for maximizing use of the space available, a sound and lighting system and possibly including an orchestra pit and dressing rooms.
 - A fly space not to in any way physically intrude on the existing gymnasium.
 - Lobby, box office, concessions, restrooms and coatroom.
 - Scenery shop and outside stage access included in first phase.
 - Design and cost estimates for future completion of the Center.

- Retain historical integrity of the Facility.

The express understanding of any work necessary to accomplish the renovation cannot interfere with the operation of the School Facility.

- The City and Coalition agree that alcohol will be allowed at the Facility with an approved Alcoholic Beverage Application for a Special Beer and Wine License for a scheduled event.
- The City, the Coalition, and the School District agree that all events at the Facility will be clearly delineated from school sanctioned events and follow community standards in regard to censorship.
- The Parties acknowledge that this is a preliminary agreement setting forth the parameters of future, detailed negotiations. Either the School District or the Coalition can, at any time prior to the execution of a formal agreement, and at their respective sole discretion, decline to continue to pursue this joint use concept without obligation.
- This Agreement constitutes the entire agreement of the Parties. No other writings or negotiations are part of this document. This agreement may only be modified by mutual agreement of the Parties. Any modifications or addendums to this agreement must be in writing.

In addition to the contingencies set forth throughout this agreement, this agreement is contingent on the approval of this agreement and subsequent formal agreements by the Parties and their respective governing bodies.

Rapid City Performing Arts Coalition

By: *Kon Reed*

Its: *President*

Date: *11-2-09*

Rapid City Area School District

By: *Wesley J Storm*

Its: *President*

Date: *10/26/09*

~~City of Rapid City~~

By: *[Signature]*

Its: *Mayor*

Date: *October 12, 2009*

Finance Officer:

[Signature]
(SEAL)