

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

This Lease and Management Agreement ("Agreement") is made effective the ____ day of _____, 2011, by and between the City of Rapid City, a municipal corporation, hereinafter referred to as the "City," of 300 Sixth Street, Rapid City, SD 57701, and Rapid City Fine Arts Council, Inc., a South Dakota non-profit corporation, hereinafter referred to as the "Arts Council," of 713 Seventh Street, Rapid City, SD 57701.

WHEREAS, the City desires to obtain the services of the Arts Council to manage and operate the Dahl Fine Arts Center; and

WHEREAS, the Arts Council wishes to manage and operate the Dahl Fine Arts Center on behalf of the City; and

WHEREAS, the Dahl Fine Arts Center is owned by the City; and

WHEREAS, it would be mutually beneficial for the City to lease the Dahl Fine Arts Center to the Arts Council and for the Arts Council to manage the Dahl Fine Arts Center for the City; and

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

NOW THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the parties hereby agree 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. Purpose. The purpose of this Agreement is to set forth the terms and conditions under which the Arts Council will possess, manage and control the operations of the Dahl Fine Arts Center for the City and to set forth the obligations of each party.
3. Lease of Property. The City agrees to lease to the Arts Council the following described property:

Lots 1-5 and the North Half of the vacated alley adjacent to said lots; the East Half of Lot 26; all of Lots 27-32; and the South Half of the vacated alley adjacent to Lots 28-32 all in Block 103 of the Original Townsite of the City of Rapid City, Pennington County, South Dakota

commonly known as 713 Seventh Street. Arts Council shall be entitled to exclusive possession of the property, which shall be hereinafter referred to as the "Dahl Fine Arts Center" or "the leased premises."

4. Consideration. Arts Council agrees to pay the City One Dollar (\$1) rent per year for the leased premises. The City agrees to pay Arts Council a Management Fee each year, which fee shall be set by the City Council according to its yearly budget. The parties further agree that the mutual covenants and promises contained herein shall constitute good and sufficient consideration for the execution of this Agreement.

5. Term. The term of this Agreement shall begin on the date of execution as written above, and shall end on December 31, 2012. This Agreement shall automatically renew at the end of the initial term for a period of one year. At the end of each successive one-year term, this Agreement shall automatically renew for another one-year term. This Agreement may be cancelled prior to any renewal term by either party delivering written notice to the other on or before October 1st of the then-current term.

6. Management. The Arts Council agrees to manage the Dahl Fine Arts Center consistent with the terms of this Agreement. The Arts Council shall maintain offices in the Dahl Fine Arts Center and shall have the authority and responsibility to rent or lease portions of the building. All rents collected from any such rentals shall go to the Arts Council.

7. Monetary Donations. It is specifically understood that the Arts Council, in cooperation with other art groups and associations, conducts fund drives and accepts donations for conducting art programs. All donations of money deposited by individuals in donation boxes at the Dahl Arts Center or specifically designated for facility use to the Arts Council, shall be used solely for the furnishings of the building and for operations and administration of the building by the Arts Council.

8. Art Donations. All donations of art objects to the Dahl Fine Arts Center and accepted by the Arts Council shall become the property of the Arts Council.

9. Accounting. The Arts Council shall provide a copy of the preceding year's 990 to the City, following the end of each fiscal year ending on December 31st.

10. City Use of Dahl Arts Center. The Arts Council shall not charge rent to any City department and shall make the facilities available to City departments during normal working hours for compatible uses when at the time of the request by the City department there is no conflicting use previously scheduled.

11. Records and Losses. The Arts Council shall maintain records of the users of the building and shall report on the next working day any loss to said building, mural, fixtures, or other City property in the building covered by the City's insurance policy, to the City Finance Officer.

12. Fixtures. All permanent fixtures installed by the Arts Council or any lessee in the Dahl Fine Arts Center shall become and remain the property of the City, including permanent fixtures of art objects on the premises.

13. Maintenance. The City shall provide for janitorial services and maintenance for upkeep of the building and the grounds. City shall maintain heating, ventilation, humidity and cooling systems for the Dahl Fine Arts Center.

14. Utilities. The City shall provide for payment of all utilities, excluding telephone, cable, and internet services.

15. Property Insurance. The City shall pay the costs of all insurance on the building, mural, risers, staging, lighting and the permanent fixtures installed therein for its replacement value. The Art Council is responsible for insuring its personal property located upon the leased premises. The City will not provide any property insurance coverage for the benefit of the Arts Council.

16. Liability and Indemnification. Arts Council agrees to defend, hold harmless, and indemnify the City from any and all legal liability, including reasonable attorney fees, in respect to bodily injury, death, and property damage arising from the negligence of the Arts Council in the occupation or use of the leased premises by Arts Council, its officers, directors, agents, volunteers and employees.

Arts Council agrees to purchase and maintain commercial general liability insurance for each occurrence of injury or property damage in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence. The City shall be named an additional insured in said policy and Arts Council shall annually furnish to the City evidence of insurance by a certificate of insurance of required coverage. Notwithstanding any provision herein to the contrary, if Arts Council shall fail to secure said insurance, if said insurance shall lapse, or if any other default of this Section occurs, Arts Council shall have fifteen (15) days to cure said default.

17. Annual Appropriations. The provisions of this Agreement which require City to expend funds are expressly made subject to annual appropriation by the City. If, during any subsequent fiscal year the City shall fail to appropriate funds to pay for the services to be provided hereunder, then and in that event Arts Council shall have the option to terminate this Agreement, and upon any such termination, neither party shall have any liability to the other arising from the otherwise unexpired term.

18. Relationship between the Parties. This Agreement does not create an employment relationship between the City of Rapid City and Arts Council's officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between the Arts Council and the City of Rapid City with regard to the Dahl Fine Arts Center. No agent of Arts Council shall be the agent of the City, and Arts Council covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City with regard to the Dahl Fine Arts Center.

19. Liens. Arts Council 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 immediate termination.

20. Waste and Nuisance Prohibited. During the term of this Agreement, Arts Council shall not commit, or suffer to be committed, any waste or nuisance on the premises.

21. Termination. The City shall have the option of terminating this Agreement immediately if any of the following instances of default occur:

- a. Arts Council abandons the premises;
- b. Arts Council dissolves or is administratively dissolved;
- c. Arts Council enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise;
- d. Arts Council ceases to be a nonprofit organization; or
- e. Arts Council defaults in its compliance with any other term or covenant hereunder, which default is not cured within thirty (30) days after notice is given.

Arts Council shall have the option of terminating this Agreement immediately if City defaults in its compliance with any term or covenant hereunder, which default is not cured within thirty (30) days after notice is given.

Should either party exercise its option to terminate this Agreement pursuant to this section, such termination will be effective upon mailing of written notice to the other party, at which time this Agreement shall terminate.

22. Notices. All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

City of Rapid City
Attn: Finance Officer
300 Sixth Street
Rapid City, SD 57701

Rapid City Arts Council
Attn: Executive Director
713 Seventh Street
Rapid City, SD 57701

23. Change of Contacts. Arts Council agrees to notify City of any changes in its point of contact or the address of business correspondence, within thirty (30) days after said change.

24. Non-Discrimination. Arts Council 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. Arts Council further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City

25. Time of Essence. Time is of the essence of this Agreement.

26. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

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

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

29. 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.

30. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

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

32. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, South Dakota.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(SEAL)

RAPID CITY ARTS COUNCIL, INC.

By _____

Its _____

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

On this the _____ day of _____, 2011, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of Rapid City Arts Council, Inc., and that s/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 him/herself as _____.

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

(seal)

Notary Public - South Dakota
My Commission Expires _____