

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY  
AND THE PERFORMING ARTS CENTER OF RAPID CITY, INC. RELATING TO  
CORPORATE STRUCTURE AND OPERATIONS**

This Memorandum of Understanding (“MOU”) is made and entered into 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 **PERFORMING ARTS CENTER OF RAPID CITY, INC.**, a South Dakota non-profit corporation, hereinafter referred to as the “PACRC,” of 601 Columbus Street, Rapid City, SD 57701.

WHEREAS, the City, the Rapid City Area School District, and PACRC’s predecessor in interest (the Rapid City Performing Arts Coalition) have previously entered into that certain Memorandum of Understanding dated November 2, 2009, hereinafter called the “Agreement”; and

WHEREAS, the Agreement provided that the City would contribute \$3.25 Million, the School District would provide the location, and the Rapid City Performing Arts Coalition would provide the balance needed toward the construction of a performing arts center in what was formerly Dakota Middle School; and

WHEREAS, the Agreement also provided for a 5-member board to operate and manage the facility; and

WHEREAS, the Rapid City Performing Arts Coalition dissolved the 5-member board, and has formed the PACRC to operate and manage the facility; and

WHEREAS, the City and PACRC desire to set forth the number of City appointments to the PACRC Board of Directors (“Board” or “PACRC Board”); and

WHEREAS, the City and PACRC desire to include other provisions in the PACRC governing documents; and

WHEREAS, the changes included in this MOU will be mutually beneficial for the City and PACRC; and

WHEREAS, the Agreement gave the City  $\frac{1}{5}$  of the representation of the original board, and this MOU maintains that ratio with the PACRC Board; and

WHEREAS, this MOU will not bind the City to any additional funding, nor will it prohibit additional City funding; and

WHEREAS, any additional funding provided by the City may entitle the City to additional representation based on the proportion of PACRC’s operations budget; and

WHEREAS, the parties desire to enter into this MOU 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 MOU and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Purpose. The purpose of this MOU is to set forth the manner of appointment of directors, size and operation of the PACRC Board and to set forth the obligations of each party.

3. PACRC Board of Directors. PACRC agrees to include provisions in its governing documents to accomplish the following:

- a. The PACRC Board shall consist of not more than 11 and not less than 7 directors.
- b. PACRC shall have the discretion to determine the number of directors within the above-cited limit, but it shall not be able to reduce the ratio of directors appointed by the City to total directors to less than 1/5th.
- c. The directors appointed by the City shall be appointed as follows:
  - i. One Alderman shall be appointed and confirmed by the Common Council as a director.
  - ii. One director shall be appointed by the Mayor with confirmation by the Common Council.
  - iii. At such time as the number of directors is set by the Board to be 11, the Board shall notify the Mayor of such decision, and the Mayor shall appoint the eleventh director (third City-appointed director) with confirmation by the Common Council.
- d. The remaining directors shall be chosen pursuant to a bylaw adopted by PACRC.
- e. There shall be no requirement that any director be a resident of the City of Rapid City.
- f. Employees or contracted managers or administrators of the PACRC shall not serve as directors.
- g. The directors appointed by the Mayor shall serve a three-year term, and the Alderman appointed by the Common Council shall serve a one-year term.

- h. All terms of directors appointed by the City shall begin August 1 of the year appointed.

PACRC may provide recommendations to the Mayor and Council regarding the appointment of directors by the City. The Mayor and Council agree to consider the recommendations, but shall not be bound by any such recommendation.

4. Meetings of the Board of Directors. Meetings of the PACRC Board of Directors shall be noticed to the public. Such notice shall be accomplished by PACRC causing to be prominently displayed on its website the date, time, place and proposed agenda of the meeting twenty-four hours prior to the time of the meeting. Meetings shall be open to the public except for executive sessions. Nothing in this MOU shall operate to limit the Board's ability to limit public participation in its meetings.

5. Minutes of Board Meetings. Minutes of all Board meetings shall be kept and made available to the public by posting on PACRC's website.

6. Dissolution. PACRC may not dissolve or vary the provisions in its governing documents affected by this MOU without approval of the City.

7. Consideration. The parties agree that the previous Agreement and the City's investment in constructing the performing arts facility are good and sufficient consideration for entering into this MOU.

8. Previous Agreement Superseded. The previous Agreement is superseded by this MOU, and such previous Agreement shall be terminated upon execution of this MOU.

9. Amendments. This MOU may only be amended by a written document duly executed by all parties.

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

11. Counterparts. This MOU may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one MOU.

12. 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 MOU, which shall remain in full force and effect.

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
Finance Officer

(seal)

**PERFORMING ARTS CENTER OF RAPID CITY, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_