

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY
AND THE ALLIED ARTS FUND**

This Memorandum of Understanding (“MOU”) is made 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 the **ALLIED ARTS FUND**, a South Dakota non-profit corporation, hereinafter referred to as “AAF,” of PO Box 4080, Rapid City, SD 57709.

WHEREAS, AAF has served as a united funding agency for the arts in Rapid City and the surrounding area; and

WHEREAS, AAF is a leading advocate for art and culture in the Rapid City; and

WHEREAS, AAF works cooperatively with its member organizations to provide positive experiences in all types of arts and improve the overall quality of life in Rapid City and the Black Hills area; and

WHEREAS, AAF’s work encourages development and improvement of the community; and

WHEREAS, the City has appointed AAF to perform the services provided as detailed below; and

WHEREAS, the parties desire to reduce their mutual agreements to writing with this MOU.

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 terms and conditions under which AAF will work with the City and to set forth the obligations of each party.

3. City Payment. The City agrees to pay AAF a stipend each year, which payment 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 MOU.

4. AAF Services. AAF will provide the following services to the City in exchange for the payment provided in ¶ 3:

- a. Provide financial operating and promotional support for its member arts agencies for the enrichment of people’s lives in Rapid City and the Black Hills region;

- b. Encourage collaborative opportunities with schools and other organizations;
- c. Provide and encourage access to and exercise of creative expression;
- d. Structure its arts and culture giving to promote both intrinsic and instrumental values in the arts;
- e. Encourage public involvement in the arts and cultural community;
- f. Embrace all the various manifestations of art and culture in our community;
- g. Promote economic development through public art and a vibrant cultural community that beautifies and animates Rapid City, provides employment, attracts residents and tourists, complements adjacent businesses, enhances property values, expands the tax base, attracts well-educated employees, and contributes to a creative and innovative environment;
- h. Support development of the community through social programs associated with artists and civic participation of individuals;

5. Term. The term of this MOU shall begin on the date of execution, and shall end on December 31, 2016. This MOU 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 MOU shall automatically renew for another one-year term. This MOU 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. Financial Statements. AAF shall provide a copy of the preceding year's financial statement to the City Finance Office following the end of each fiscal year.

7. Annual Appropriations. The provisions of this MOU 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 AAF shall have the option to terminate this MOU, and upon any such termination, neither party shall have any liability to the other arising from the otherwise unexpired term.

8. 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

Allied Arts Fund
Attn: Executive Director
PO Box 4080
Rapid City, SD 57709

9. Change of Contacts. AAF 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.

10. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this MOU or otherwise, in an employer-employee, principal-agent, joint venture or partnership relationship with each other, and each party agrees not to represent to any other person, or to assert in any form or forum to the contrary. Neither party is authorized to act as an agent for, or legal representative of, the other party and neither party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other party.

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

12. 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 MOU constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

13. Integration. This MOU and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

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

15. 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.

16. Construction. The language in all parts of this MOU shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. 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. The parties agree that each party has reviewed this MOU and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this MOU shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this MOU.

17. Severability. If any provision of this MOU 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.

18. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this MOU, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this _____ day of _____, 2015.

CITY OF RAPID CITY

ATTEST

Mayor

Finance Officer

(SEAL)

ALLIED ARTS FUND

By: _____

Its: _____