

**MANAGEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY, SD  
AND MUSEUM ALLIANCE OF RAPID CITY, INC.**

THIS MANAGEMENT AGREEMENT (“Agreement”) is executed this \_\_\_\_ day of \_\_\_\_\_, 200\_, by the City of Rapid City, SD, (“City”), and Museum Alliance of Rapid City, Inc., a nonprofit organization organized under the laws of the State of SD (“Management Company”).

The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

**RECITALS**

WHEREAS, the City owns the Journey Museum located in downtown Rapid City which is used for cultural, social, and business events, exhibitions, public and private gatherings and other similar uses, situated in Rapid City, SD, (“The Journey”); and

WHEREAS, the City desires to have Management Company manage and operate the Journey and Management Company desires to perform such services on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
DEFINITION OF TERMS**

- 1.1 **Definition of Terms:** The following terms when used in the Agreement shall have the meaning indicated:
- a. “Agreement” means this Journey Management Agreement, including all exhibits thereto.
  - b. “Control” means possession of the power to direct, or cause the direction of, the Management Company or any significant policies of another person.
  - c. “The Journey” shall have the meaning set forth in the Recitals.
  - d. “Journey Employees” shall have the meaning set forth in Article 10.
  - e. “FF&E” means all fixtures, furnishings, furniture, and equipment, including audiovisual equipment, and telephone or vending machines which are purchased rather than leased, but not including supplies or inventories.
  - f. “Governmental Authority” means the United States of America, the State of South Dakota, Pennington County, the City of Rapid City, and any agency, department, commission, board, bureau, instrumentality, or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Management Company, this transaction or the site and the improvements thereon or any portion thereof.

- g. "Inventories" means inventories as defined in the Uniform System of Accounts, such as provision in store rooms, refrigerators, pantries, and kitchens, also, fuel, mechanical supplies, stationery, and other expendable supplies, but excluding all food, beverages, tobacco products, novelties, and promotional items.
- h. "Notice" shall have the meaning set forth in Article 17.
- i. "Opening Date" means the date the Journey actually opens to the public for business.
- j. "Termination" means the expiration or earlier termination of this Agreement.

**ARTICLE II  
FURNITURE, FIXTURES, AND EQUIPMENT**

- 2.1 **FF&E.** Unless otherwise agreed by the parties, all FF&E purchased by City funds shall be the property of the City. All FF&E purchased or provided solely by the Management Company or Journey tenants shall be the property of the Management Company or the tenants.
- 2.2 **Property Donated to Management company or Journey Tenants.** Any FF&E or other intangible property or cash or articles donated to the Management Company or Journey tenants shall become the property of the Management Company or tenant to which it is given. If any gifts are given under terms that they be returned to the donor, those terms shall be honored. If damage to the Journey results from any removal, the Management Company or tenant will repair the damage at its sole expense.
- 2.3 **Property Donated to City.** Any FF&E or other property or cash or articles donated to the City for Journey use shall become the property of the City. If any gifts are given under terms that they be returned to the donor, those terms shall be honored.
- 2.4 **FF&E. Management Company shall provide all initial FF&E.** The City shall provide funding for the initial FF&E pursuant to a budget request from the Management Company. Management Company shall maintain the FF&E. At the termination of this Agreement it shall surrender all FF&E to the City except FF&E provided solely by the Management Company with Management Company funds and carried on the Management Company's inventory or its tenants, including that equipment repaired or replaced by Management Company, in similar condition to that in which it was received, reasonable wear and tear excepted. Management Company shall provide an annual inventory of FF&E to the City at the end of each fiscal year. At the termination of this Agreement, FF&E owned or provided by the Management Company or its tenants that is affixed to the building may be removed, providing any damage upon such removal is repaired by Management Company.
- 2.5 **Inventories.** Management Company shall obtain, replace and make additions to inventories. Inventories shall be maintained by Management Company and

remain the property of Management Company throughout the term of this Agreement.

- 2.6 **Management Property.** Unless otherwise agreed, the Management Company shall obtain at its cost and shall be the owner of all FF&E used by it as part of its management function. The Management Company shall maintain an inventory of these items.

### **ARTICLE III MANAGEMENT SERVICES**

- 3.1 **General.** The Management Company shall operate and manage the Journey as set forth in this Agreement. Management Company will supervise, direct, control, manage, and operate the Journey during the term of the Agreement.
- 3.2 **City Access to Premises.** The City may enter upon the Journey premises at any reasonable time for the purpose of inspecting the Journey, preventing waste, making repairs, or for any other reasonable purpose. Any City access shall not interfere with scheduled Journey activities.
- 3.3 **Sublease Agreements.** Management Company shall manage and negotiate leases or license agreements in connection with the operation of the facilities.
- 3.4 **Licenses and Permits.** Management Company shall apply for, process, and take all necessary steps to procure, pay for, and maintain in good standing throughout the term of this Agreement all licenses and permits required for the operation of the Journey. In doing so, Management Company shall represent to all appropriate authorities that the City is the owner of the facility. Management Company shall utilize such licenses in accordance with the requirements of all appropriate government agencies and shall hold the City harmless, and shall reimburse it for all claims, damages, fines, or forfeitures, including reasonable attorneys' fees actually incurred, for any violation of such governmental regulations throughout the term of this Agreement. The hold harmless provisions of this paragraph shall survive the termination of this Agreement for violations of such governmental regulations occurring during the term hereof.
- 3.5 **Personnel.** Management Company shall select, employ, and supervise any and all personnel as are necessary for the proper operation, maintenance, and security of the Journey. All personnel so employed shall be employees of the Management Company, and the terms of their employment, including compensation, shall be at the sole discretion of the Management Company. The salaries and all additional costs of employment of the aforementioned personnel employed by Management Company shall be borne by Management Company.
- 3.6 **Taxes.** Management Company, unless it has subcontracted with other agencies to do so, shall collect, account for, and remit promptly to the proper governmental

authority all applicable excise, sales, and use taxes or similar governmental charges collected at the Journey directly from the patrons or guests, or as a part of the sales price of any goods, services, or displays, such as occupancy, gross receipts, admission, or similar or equivalent taxes.

- 3.7 **Accounting System.** Management Company shall establish, implement, and supervise the accounting, inventory, and cost control systems necessary for the efficient operation of the maintenance of the Journey. Management Company shall maintain adequate control over the records of the Journey, of the acquisition and disposition of all FF&E, and of all fixed asset supplies and inventories used in the operation of the Journey.
- 3.8 **Maintenance.** Except as otherwise expressly provided herein, Management Company shall be responsible for all maintenance to the Journey. The Management Company shall be responsible for all upkeep, including but not limited to, glass, audio-visual equipment, chairs, draperies, carpet, minor wall repair. The Management Company shall not commit waste to the Journey and shall maintain it in as good a condition as when received, ordinary wear and tear excepted.
- 3.9 **Advertising and Promotion.** Except as otherwise expressly provided herein, Management Company shall, at its sole cost and expense, pay the administrative and general expenses and the cost of Journey advertising, business promotions, and public relations.
- 3.10 **Standard of Performance.** Management Company shall use, operate, and maintain the Journey for the City in accordance with uses and standards prevailing in first class performing arts and museum facilities of comparable size, class, and standing. Management Company shall take such actions as necessary to maintain these performance standards.
- 3.11 **Operational Services.** The Management Company will be responsible for all services required to stage (set up and tear down) the Journey for each event, including, but not limited to, services involving any stage area, sound, lighting, rigging, dressing area, stage equipment, loading in and loading out, and seating setup and tear down. The Management Company will provide all management staff, ticket sales, personnel, ushers, and other personnel required for the operation of the Journey, including, but not limited to, ticket taking, program distribution, and assistance to patrons generally, including the handicapped. The Management Company may subcontract any operational services.
- 3.12 **Ticket Sales.** The Management Company shall be responsible for all aspects of ticket sales for events and activities, including computerized tickets. These services shall include ordering, selling, and accounting for tickets, reporting ticket revenues for a given event for each user of the Journey, cash and credit card processing, complete auditing and accounting for each event, and timely exchange

of income less expenses at the end of each event in the traditional manner. The Management Company may subcontract any operational services.

- 3.13 **Security.** The Management Company will arrange, through local police, local contract security, or other sources for all security services for events at the Journey and for general security when events are not in progress.
- 3.14 **Presenter of Events.** The Management Company may, at its option, present an event at the Journey, and it shall so inform the City. Unless otherwise agreed, rental of the Journey for such events shall be at the historical or published rates. Risk of loss or gain relating to the presentation shall be at the Management Company's sole gain or loss as if the City were dealing with an unrelated third party.
- 3.15 **Americans with Disabilities.** The Management Company will comply with the requirements of the Americans with Disabilities Act in its management procedures.

#### **ARTICLE IV TERM**

- 4.1 **Term.** This Agreement shall commence on May 1, 2006. It shall terminate on April 30, 2008.
- 4.2 **Delivery of Possession.** Upon the termination of this Agreement, the Management Company will yield and deliver peaceably to the City possession of the Journey (including FF&E and inventory) belonging to the City and any alterations, additions, or improvements thereto, promptly and in good condition, order, and repair, except for reasonable wear and tear.

#### **ARTICLE V JOURNEY REVENUE**

- 5.1 **Rent of Facilities.** All Journey facilities available for use by the public for performances, rehearsals, meeting, or other uses which may be developed for the Journey shall be rented by the Management Company.
- 5.2 **Rental Proceeds.** All proceeds from the renting of Journey facilities set forth in this section shall be collected by Management Company, and be the property of the Management Company.
- 5.3 **Concession Revenue.** The Management Company shall have the exclusive right to operate and conduct a concession business at the Journey through manual service and other methods for the sale of commodities, including foods, beverages, including alcoholic beverages, novelties, promotional items, souvenirs, and other items.

The City shall not authorize or permit any other person or entity, and shall not on his own behalf, sell, or offer for sale, at the Journey any of the commodities for which the Management Company has concession rights.

The Management Company may, on terms agreeable to it, permit sublessees of the Journey to operate concessions.

## **ARTICLE VI BUDGET**

- 6.1 **IRS Rules Apply.** Any payments made to the Management Company under the provision of the Agreement shall be in compliance with the provisions of Revenue Procedure 93-19 of the Internal Revenue Service of the United States of America as promulgated as of the date of this Agreement.
- 6.2 **Balanced Budget.** The Management Company shall annually at a time determined by the City submit to the City a balanced annual operating budget for the coming calendar year. The annual operating budget shall include projected gross revenue. Any deficit between expenditures and revenues may be requested from the City as a subsidy. Except as may be provided by the Common Council, the City is not obligated to provide a subsidy under this Agreement.
- 6.3 **Budget Approval.** A budget shall be approved by the City and Management Company at a time to be determined by the City. The budget may be revised pursuant to City finance procedures. The City will proceed in good faith in consideration of the Management Company's budget request pursuant to the provisions of the operating Agreement.
- 6.4 **Subsidy Payments.** The City shall pay any subsidy allocated to the Management Company as mutually agreed by the City and the Management Company.

## **ARTICLE VII FINANCIAL REPORTS**

- 7.1 **Keeping Records.** Management Company's services to the City shall include keeping complete and adequate books and records reflecting the results of the operations of the Journey in accordance with generally accepted accounting principles. Management Company shall at all times keep and maintain at the Journey or its regular place of business all records, books of account, and other records relating to or reflecting the operations of Management Company affecting the Journey, including such records as may be required by the City to be maintained by the Management Company and any information required to be maintained pursuant to any provision of this Agreement.

- 7.2 **No Removal.** Except as otherwise provided herein, none of such books and records, including, without limitation, books of account, and front office records, shall be removed from the Journey or its regular place of business without the City's prior written approval. Upon any termination of this Agreement, all such books and records shall be the property of the City and shall be maintained by the City, provided that the Management Company shall have the continuing right to review or copy all such books and records.
- 7.3 **Additional Reports.** Management Company shall, upon the request of the City, prepare for the City or assist the City in the preparation of such additional financial reports with respect to the Journey as may be required in the preparation of the annual Journey financial report.
- 7.4 **City Inspection.** Management Company, upon reasonable notice by the City to Management Company, shall permit the City, acting through its employees and/or representatives, to make inspections, audits, examination, or abstracts of all records and books of account, including such records as may be reasonably required by the City to be maintained by Management Company and information required to be maintained pursuant to any provision of this Agreement. Any such inspection or audit shall be conducted during the reasonable business hours of Management Company and Management Company shall make all of the aforesaid records, books of account, and other documentation available within seven days of the written request by the City.
- 7.5 **Discrepancies.** Notwithstanding anything to the contrary contained in this Agreement, the City may terminate this Agreement if any inspection or audit by the City or its agents discloses (i) an intentional material discrepancy on the part of Management Company, or (ii) an intentional material discrepancy made by a person other than those set forth in (i) above about which Management Company had knowledge, did not disclose in writing to the City, and did not take such corrective action as Management Company should deem reasonably necessary to avoid any further discrepancy. If any inspection or audit discloses an intentional material discrepancy of Management Company, the City shall inform Management Company and Management Company shall (i) make such monetary adjustments including payment to the City as may be required because of such discrepancy, and (ii) take such actions as Management Company deems reasonably necessary to avoid any further intentional discrepancy.
- 7.6 **Fees.** If the City retains counsel to collect any sums ultimately determined to be owing to it from Management Company, Management Company will pay to the City the sums reasonably expended by the City, including reasonable attorneys' fees.
- 7.7 **Obligations Survive Termination.** The obligations of Management Company under this Article shall survive the termination of this Agreement.

**ARTICLE VIII  
THEATRICAL AND PROPERTY RIGHTS**

- 8.1 The Management Company may negotiate the sale or rental of theatrical and property rights in artistic productions developed, authored, or acquired by the Management Company. All royalties or revenues received from such sales or rental may be used by the Management Company for the acquisition of additional theatrical rights to artistic productions or such other Journey-related uses as the Management Company may direct.
- 8.2 The Management Company and the City shall have exclusive use and rights to any copyright or trademark associated with the term “Journey Museum” and any associated symbols.
- 8.3 The Management Company may negotiate the sale, rental, reproduction, or licensing of reproductions of exhibits developed or acquired by the Management Company which were developed in whole or in part from City funds. All royalties and revenue received from such sales or rental shall be credited to a trust account to be used exclusively for acquisition of new or replacement exhibits.

**ARTICLE IX  
INSURANCE**

- 9.1 The City, at its own expense, shall procure and maintain property coverage, including boiler and machinery coverage, on the building; and business personal property in limits as may be required to cover City's property; and commercial general liability insurance with a combined single limit not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Property coverage is to be written at 100% of replacement value of building.
- 9.2 The Management Company, at its own expense, shall procure and maintain property coverage on all its business personal property and fine arts displays, including and displays owned by or donated to the City for display at the Journey; and commercial general liability insurance, listing the City as additional insured in limits not less than \$2,000,000 per occurrence and \$2,000,000 general aggregate, including products and completed operations aggregate. Additional Insured endorsement shall require 30 days written notice of cancellation to the City for any reason other than Non-Payment of Premium which shall follow state law for notice to Additional Insured. In addition, Management Company, at its own expense, shall procure and maintain the following additional coverages, all through policies of insurance issued by insurance companies acceptable to the City. Evidence of Insurance and Additional Insured endorsement will be filed with the City Finance Office each year within 10 days following the anniversary date of Management Company's insurance policies.



- a. Workers' compensation insurance with statutory limits of the workers' compensation laws of the State of South Dakota and coverage B – Employer's Liability in limits of \$1,000,000 each accident and \$1,000,000 each disease and policy aggregate.
- b. Automobile liability insurance covering all owned, non-owned, and hired automobiles. Such insurance shall provide coverage at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence.
- c. Liquor Liability insurance naming the City as an additional insured with combined single limit not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. Policy will provide 30 days written notice of intent to cancel for any reason other than Non-Payment of Premium which shall follow state law for notice to Additional Insured.
- d. Commercial Employee Dishonesty Coverage Blanket Coverage Form A in a limit agreeable to City, but in no event to be less than \$ . Coverage form to include coverage for theft of fine arts not covered by museum floater, whether or not owned by the Management Company. Coverage also must include theft of all property by Management employees, subject to the limit of bond, for property of others that Management Company is legally liable for. The City understands and acknowledges that such coverage language does not transfer rights or benefits of the coverage to any party other than the Management Company and that in the event of such theft, the Management Company agrees to file claim under this Bond for recovery. The Commercial Blanket Bond must also include non employed Board Members. All such special endorsements are to be evidenced on all new and renewal certificates of insurance to the City.
- e. The Management Company will agree to defend all claims against it whether covered by their insurance policies or not.
- f. If under any scenario, The Management Company, is advised by their general liability carrier or others to secure certificates of insurance from independent contractors performing work on behalf of the Management Company; OR from other third parties renting and utilizing the Journey for a public or private function, the Management Company shall require such independent contractor performing work, or third party renting or utilizing the facility, to also name The City as additional insured, in addition to naming The Management Company.

All property policies and boiler and machinery - equipment breakdown policies of coverage, for both The City and The Management Company shall contain waivers of subrogation against the other party. If necessary, respective parties shall obtain in writing from their insurance carrier permission for the waiver(s) of subrogation.

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the above coverages and limits are

adequate to protect any individual/group/business, its consultants' or subcontractors' interests and assumes no liability therefore. The Management Company agrees to hold the City harmless from any liability including additional premium due because of the Management Company's failure to maintain the coverage limits required.

- 9.3 **Blanket Policies.** All insurance may be obtained by Management Company or the City by endorsement or equivalent means under blanket insurance policies, provided that such blanket policies fulfill the requirements specified herein.
- 9.4 **Claims.** Management Company and the City shall cooperate in a prompt manner in connection with the making of any claims and the collection of any insurance money that may be due and shall execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance monies.
- 9.5 **Failure to Maintain Insurance.** If the Management Company fails to obtain and maintain the insurance required pursuant to this Article or if any insurer cancels or modifies such insurance without the City's consent, at the City's election (but without any obligation to do so), the City may procure similar insurance coverage and Management Company shall reimburse the City for any premiums paid by the City within ten days of demand therefore. Any amounts unpaid shall accrue interest at the New York Prime Rate plus five percent from the day that the insurance required hereunder is not in effect unless it gives evidence, to the reasonable satisfaction of the City, of the unavailability of such insurance.
- 9.6 **Risk Management.** The Management Company shall cooperate in the implementation of any loss control recommendations of the City.

## **ARTICLE X EMPLOYMENT**

- 10.1 **Personnel.** Management Company shall select and hire all of the personnel necessary or required for the operating, maintenance, and security of the Journey ("Journey Employees"). Journey employees shall include such employees with such levels of expertise as the manager of a first-class facility of similar function and size to the Journey would have on staff for the smooth operation of such facility. In no manner shall these employees be considered employees of the City.
- 10.2 **Not City Employees.** Journey employees shall in every instance be deemed employees of Management Company and not of the City. The City shall have no right to supervise or direct such employees. All employment contracts shall state that the employee is the employee of the Journey and not a City employee.

- 10.3 **Reports.** Management Company shall prepare and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel of the Journey or the operation of the Journey.
- 10.4 **Independent Contractor.** Management Company will not represent to anyone that its relationship to the City is other than that of a lessee and independent contractor, and the City and Management Company may so inform any parties with whom they deal and may take any other reasonable steps to carry out the intent of this subsection.

## **ARTICLE XI DAMAGE AND REPAIR**

- 11.1 **Damage and Repair.** If the Journey or any portion of it is damaged or destroyed during the term of this Agreement by fire, casualty, or any other cause, Management Company shall give prompt notice to the City. The City shall, to the extent of insurance proceeds, including any applicable deductible, or self insurance, with due diligence, repair, rebuild, or replace the Journey so that after such repairing, rebuilding, or replacing, it shall be substantially the same, to the extent of insurance proceeds or self insurance, as prior to such damage or destruction. If the City fails to undertake such work within ninety days after notice of the fire or other casualty, or fails to complete the work diligently, within a reasonable time agreed to between the City and Management Company, Management Company may, at its option, terminate this Agreement by written notice to the City effective as of the date sent. Notwithstanding anything to the contrary contained herein, to the extent such loss is not covered by insurance, the City shall not have any obligations for repair, rebuilding, or replacing the Journey in the event all or a substantial part of the Journey shall be destroyed or damaged by fire or casualty.
- 11.2 **Premises Destroyed.** If the Journey is damaged or destroyed, this Agreement shall remain in full force and effect. Any City subsidy payments shall be adjusted as affected by such damage or destruction.

## **ARTICLE XII TERMINATION, REMEDIES, AND EXCULPATION**

- 12.1 **Grounds for Termination by the City.** The City may terminate this Agreement at will upon 30 days' written notice to the Management Company. The City may also terminate this Agreement by notice to Management Company if any one or more of the following events occur:
- a. If Management Company applies for or consents to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets or makes a general assignment for the benefit of its creditors, or files a voluntary petition in bankruptcy or a petition seeking reorganization, composition,

arrangement with creditors, liquidation, or similar relief under any present or future statute, law or regulation, or files an answer admitting the material allegations of a petition filed against it in any proceeding under the Bankruptcy Code, or is adjudicated bankrupt or insolvent.

- b. If any petition or complaint is filed, without the application, approval, or consent of the City seeking reorganization, composition, arrangement with creditors, liquidation, or similar relief under any present or future statute, law, or regulation with respect to Management Company seeking appointment of a receiver, trustee, or liquidator thereof of all or a substantial part of such party's assets, and such petition or complaint is pending and not withdrawn or dismissed for an aggregate of ninety (90) days (excluding any days during which such petition or complaint shall be stayed), whether or not consecutive.
- c. If Management Company breaches or fails to perform any term, covenant, or condition contained in this Agreement and fails to cure within the time period required to effectuate such cure with the exercise of due diligence.

12.2 **Grounds for Termination by the Management Company.** The Management Company may terminate this Agreement by notice to the City if the City breaches or fails to perform any term, covenant, or condition contained in this Agreement and fails to cure within the time period required to effectuate such cure with the exercise of due diligence.

12.3 **Accounting Upon Termination.** If this Agreement is terminated as provided in this Article, Management Company shall prepare or cause to be prepared financial statements in accordance with the applicable provisions of Article 7 for the period between the end of the last preceding accounting period and the termination date, and Management Company shall account to the city as of the date of termination for all amounts due and payable specified in such financial statements (such accounting shall be subject to post-termination adjustment to correct any errors in such statements; the obligation to make any such adjustment shall survive the expiration or sooner termination of this Agreement). In addition, as of the date of any such termination, Management Company shall release, transfer, or remit to the City all books, records, licenses, and property of the City held or controlled by Management Company and shall take all other necessary measures to effectuate the orderly and prompt termination of the relationship contemplated by this Agreement.

12.4 **Costs Upon Termination.** If this Agreement is terminated by the mutual agreement of the parties, neither party hereto shall be liable to the other for any damages, costs, or expenses arising out of such termination except as provided in this Article, or except as may be expressly provided in any separate agreements now or hereafter executed by said parties with respect to such liability.

12.5 **Remedies.** If this Agreement is terminated by either of the parties pursuant to any Article of this Agreement other than Article 12, or pursuant to any right to terminate at law or in equity, then the party or parties so determining may, in

addition to the remedies provided in Article 14, avail themselves of any other remedies, rights, and recourse available at law or in equity, without limitation except as expressly provided in this Article or elsewhere herein.

- 12.6 **Officials Not Liable.** No official, director, officer, agent, or employee of the City, shall be charged personally or held contractually liable by or to the Management Company under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement. No board member or director of the Management Company shall be charged personally or held contractually liable by or to the City under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement.
- 12.7 **Waiver of Breach.** The waiver by the City or Management Company of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same or any other term, covenant, or condition herein contained. Any failure on the part of the City or Management Company to require or exact full and complete compliance with any of the covenants, conditions, of Agreements of this Lease and Agreement shall not be construed as in any manner changing the terms hereof or to prevent the City or Management Company from enforcing the full provisions hereof, nor shall the terms of this Lease and Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and the Management Company.
- 12.8 **Assignment of Contracts.** If this Agreement is terminated, the City will review all contracts regarding the operation of the Journey to which the Management Company is a party. The City will, in good faith, but as its option, accept assignment of those contracts.

### **ARTICLE XIII ASSIGNMENT**

- 13.1 **Assignment Requires Consent.** Management Company shall not, without the prior written consent of the City, assign any of its rights or interests under this Agreement, delegate any of its duties hereunder, or grant any license or permit to use any of the FF&E and inventory governed by this Agreement, except as provided in this Agreement.
- 13.2 **Consent Not Unreasonably Withheld.** The City agrees not to unreasonably withhold its consent to an assignment by Management Company of all of its rights and obligations hereunder provided the proposed assignee has the expertise and a reputation for the first class management of museums of similar size.

- 13.3 **Records Available.** Management Company shall deliver to the City evidence that the proposed Management Company meets the requirements set forth above and such other documentation as may be reasonably requested with respect to the reputation, financial, and business record of the proposed Management Company. Prior to the request for assignment by Management Company, all business records of the proposed new Management Company should be made available to the City for review.
- 13.4 **Obligations Continue.** The obligations of the City and any such transferee shall continue only for that period during which the City or such transferee under this Agreement holds an interest in the Journey and/or this Agreement and during which this Agreement is in force.
- 13.5 **Notice of Assignment.** With respect to any proposed assignment, whether or not authorized by this Agreement, the transferring party shall give prompt notice to the other party in writing specifying the terms and conditions of such transfer, the parties thereto, and the expected effective date of such transfer.
- 13.6 **Assignment Void.** Any assignment or delegation of duties, in part or in whole by Management Company or any successor thereto, not authorized pursuant to this Agreement, shall unless consented to in writing by the City, be both null and void and a default permitting the other party to terminate this Agreement.

#### **ARTICLE XIV PAYMENT OF TAXES AND UTILITIES**

- 14.1 **Taxes.** All taxes, levies, assessments, and similar charges (if any), on or relating to property of Management Company or its operations at the Journey shall be paid by Management Company before they become delinquent or any fine, penalty, or interest is added thereto. In addition to the foregoing, Management Company shall pay all utility charges assessed to the Journey, including but not limited to, water, sewer, electricity, or gas.
- 14.2 **Liens.** Management Company and the City shall use their best efforts to prevent any liens from being filed against the Journey which arise from any maintenance, repairs, alterations, improvements, additions, or replacements in or to the Journey. Management Company shall act for itself and the City in this regard unless the City directs otherwise, and if any liens are filed, Management Company shall prevent any liens from becoming delinquent. The cost thereof, if the lien was not occasioned by the fault of either party, shall be treated the same as the costs of the matter to which it relates. If the lien arises as a result of the fault of one party, then the party at fault shall bear the out-of-pocket cost of obtaining the lien release.

**ARTICLE XV  
HUMAN RELATIONS**

- 15.1 **Discrimination Defined.** Management Company shall be subject to the provision of Title 2 Chapter 64 of the Municipal Code of the City of Rapid City. It is declared to be discrimination for Management Company, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.
- 15.2 **Termination.** If Management Company is guilty of discrimination, this contract may be terminated in whole or in part by the City and Management Company shall be liable for any costs or expense incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract so terminated or canceled.
- 15.3 **Compliance.** Should the Rapid City Human Relations Commission in a proceeding brought as provided by the Municipal Code of the City of Rapid City find that Management Company has engaged in discrimination in connection with this contract and issue a cease and desist order with respect thereto, the City shall withhold up to fifteen percent (15%) of any payment due the Management Company until such time as the Commission's order has been complied with or Management Company has been adjudicated not guilty of such discrimination.
- 15.4 **Access to Records.** Management Company will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.

**ARTICLE XVI  
COMPLIANCE WITH LAWS AND INTERNAL REVENUE CODE**

- 16.1 **Compliance Required.** The Management Company shall comply with all federal, state, and local ordinances, statutes, rules and regulations which may apply to the operation of the Journey. The Management Company understands and acknowledges that the Journey is being or may be financed from the proceeds of bonds, the interest on which is exempt from income taxation under the Internal Revenue Code. Accordingly, the Management Company hereby agrees that it will not permit any actions to be taken which would result in said bonds becoming "private activity bonds" or otherwise cause the interest on the bonds to become subject to federal income taxes. In furtherance thereof, the Management

Company agrees that the Journey will be open and available to all members of the general public and that it will not enter into any leases or other agreements providing for the exclusive use of the Journey by any person other than on a temporary basis in accordance with the Internal Revenue Code.

## **ARTICLE XVII MISCELLANEOUS**

- 17.1 **Execution Not a Violation.** Each party warrants, with respect to itself, that the execution of this Agreement shall not violate any provision of any judgment, writ, injunctions, order, or decree or any court or government authority having jurisdiction over it; result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or require any consent, vote, or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken. Each party covenants that it has the full right to enter into the Agreement and perform its obligations hereunder.
- 17.2 **Protect Against Liability.** Management Company will use its best efforts to not do or permit any act or thing to be done on the Journey premises which subjects the City to liability or responsibility for injury, damage to persons or property, or to any liability by reason of any violation of law or of any requirement. Management Company shall use its best efforts to exercise such control over the Journey so as to fully protect the City against any such liability. In addition, to the fullest extent permitted by law, Management Company shall indemnify and save harmless the City and the City shall indemnify and save harmless the Management Company against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including, without limitation, attorney's fees and disbursements, which may be imposed upon or asserted against or reasonably incurred by the City or the Management Company or any agency or subdivision thereof or their respective agents, employees, officers, or directors (the "indemnities") by reason of the acts or omissions of the City or the Management Company or its affiliates or the performance of each of their obligations hereunder, unless the same shall have been caused solely by the negligent or willful acts of such indemnities.
- 17.3 **Insurance.** The obligation of Management Company under this Article shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Journey.
- 17.4 **Indemnification.** If any claim, action, or proceeding is made or brought against any indemnity by reason pursuant to this Article, then, upon demand by such indemnity, the City or the Management Company at its sole cost and expense, shall resist or defend such claim action or proceeding in such indemnity's name, if necessary, by the attorneys for the City or the Management Company's insurance



carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the other party shall approve. The parties agree that if the other party is named as party to an action, the other party will reasonably cooperate in the conduct of the proceedings.

- 17.5 **Representations.** Management Company shall not represent the existence of an obligation on the part of the City, the City to any third person, without the City's prior written consent, nor shall Management Company, in the name of or on behalf of the City, borrow any money or execute any promissory note, bill of exchange, or other obligation or mortgage or other encumbrance, and Management Company hereby agrees to indemnify the City against any claims, including costs and expenses incident thereto, by reason of any such actions.
- 17.6 **Warranty Services.** Management Company will use its best efforts to comply with the operation and maintenance standards and instructions found in any warranty or required service contract relating to the Journey. If a repair or maintenance is required which is covered by such warranty or required service contract and such warranty or required service contract is not honored due to failure by Management Company to operate and maintain in accordance with the terms of the warranty or the required service contract, notwithstanding anything to the contrary contained in this Agreement, Management Company shall, at its sole costs and expense, make such repair and replacement as necessary or do such maintenance work with no contribution by the City regardless of whether or not it is deemed a non-routine repair and maintenance item.
- 17.7 **Reimbursement of Costs.** Notwithstanding any other provision of this Agreement, a precondition for payment or reimbursement by the City of any costs incurred or expenditures made by Management Company pursuant to this Agreement is that Management Company incur such costs or make such expenditures in compliance with all requirements applicable to the expenditure of funds of the City including, without limitation, public bidding and purchasing requirements. This provision is not applicable to purchases made with gifts received directly by the Management Company or its tenants.
- 17.8 **Governing Laws.** The Agreement shall be construed under and shall be governed by the laws of South Dakota.
- 17.9 **Document Property of City.** As between the City and Management Company, all documents prepared hereunder shall be the property of the City whether the work covered thereby is completed or not.
- 17.10 **Headings.** Headings of Articles are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Articles to which they refer.

17.11 **Notices.** All notices, demands, and other communications required or permitted under the provisions of this Agreement (“notice”) shall, unless otherwise specified, be in writing, sent by hand delivery, or by certified first class mail, postage prepaid, with return receipt required, to the following addresses:

As to the City:

Mayor  
City of Rapid City  
300 6<sup>th</sup> St.  
Rapid City, SD 57701

As to Management Company:

Executive Director and CEO  
Museum Alliance of Rapid City, Inc.  
222 New York St.  
Rapid City, SD 57701

or to such other address in the United States as the party to whom the notice is sent shall have designated in writing in accordance with the provision of this Article. Any such notice sent by mail shall be deemed effective when received. Any party to this Agreement may change its address by giving the other party written notice of its new address as herein provided.

17.12 **Notices of Compliance.** Any notice of specific Obligations (monetary or otherwise) received by Management Company from any insurance carrier or any governmental agency with which the Journey, the City, or Management Company must comply, and notices of non-compliance with any such obligations, shall be immediately forwarded by Management Company to the City. Notices received from a governmental agency shall exclude information bulletins, questionnaires, and similar materials related to employment practices, and other similar materials of general distribution unless compliance therewith is expected to have a material adverse effect upon the Journey, the City, or Management Company.

17.13 **Successors.** This Agreement is binding upon the successors and assigns of the parties hereto. However, this provision shall not be deemed to authorize the assignment or other transfer of this Agreement which may only be accomplished as expressly provided in this Agreement.

17.14 **Failure to Perform.** The failure of either party to insist upon a strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such terms, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

- 17.15 **Regulatory Function of City.** Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, or other governmental functions with respect to the Journey and site.
- 17.16 **Separability.** If any provision of this Agreement or its application to any person or circumstances is invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby. Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 17.17 **Agreement Complete.** The Agreement contains all the promises, Agreements, conditions, inducements, and understandings between the City and Management Company as to the matters contained herein and covered hereby. There are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, express or implied, between them other than as herein set forth other than as may be expressly contain in any written Agreement executed by the parties hereto, or instruments executed by one party hereto and accepted by the other party hereto. All discussion leading up to and in consideration of this Agreement have been merged into this document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
MUSEUM ALLIANCE OF  
RAPID CITY, INC.  
FEDERAL TAX ID NO. \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_