

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF RAPID CITY,  
RAPID CITY PERFORMING ARTS FOUNDATION,  
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 (hereafter “School District”) has a need for expanded theatre space at its Rapid City Central High School; and

WHEREAS, the Rapid City Performing Arts Foundation (hereafter “Foundation”), comprised of the A Cappella Showcase, the Black Hills Community Theatre, the Black Hills Symphony Orchestra, the Rapid City Children’s Chorus, the Black Hills Dance Theatre and the Dakota Artists Guild, 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 avoid duplication of effort to make the most expeditious use of taxpayer dollars.

NOW, THEREFORE, BE IT AGREED BY THE PARTIES AS FOLLOWS:

1. The Parties agree to jointly fund the construction 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 pay one half (50%) of the total cost of construction the Facility.
4. The Parties agree that the Foundation’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 Foundation can contribute to the cost of constructing the Facility will be limited to the amount of money the Foundation 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 Foundation 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 Foundation will need to identify alternative source of funds that will need to be available prior to the bid 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 Foundation. 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.
6. The Parties agree that the Facility shall be located on the Central High School campus at a location mutually agreed upon by the Parties. The Parties further agree they will consider all potential locations on the Central High School Campus and choose a site based on architectural and engineering recommendations and budget constraints, that is the most cost effective to build and operate, while still meeting the needs of the Parties.
7. The School District shall lease the Facility to the Foundation for ninety-nine (99) years for one dollar per year. The lease shall provide that the City of Rapid City shall have the right to take over the lease should the Foundation cease to exist or in any way materially breach the terms of the lease.
8. The annual Master Calendar shall be adopted as soon as feasible, but in no event later than April 1<sup>st</sup> of each year by the Board of Directors designating times for the School District and the Foundation. The School District and the Foundation agree that time will be allocated on an equal basis between the two Parties. The Parties acknowledge that Central High School has certain performing arts events with dates that are mandated by the South Dakota High School Activities Association of the State of South Dakota (hereinafter referred to as "Mandated Performances"). Therefore the Parties further agree that all Mandated Performances will be placed on the calendar first. The Parties also agree that any Mandated Performance time shall be counted against the School District's allotted time. The Parties further agree that after the scheduling of Mandated Performances all other Schedule Requests from Central High School and the Foundation 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 Board. The Foundation 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 School District will be responsible for the management of the facility in accordance with policies and procedures adopted by the Board of Directors. The School shall pay all operation, maintenance, and upkeep expenses associated with the Facility.
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 Foundation shall retain all of the proceeds from sale of tickets and concessions during times allocated to the Foundation 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 Foundation 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 Foundation, but the Foundation 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 Foundation shall not exceed a total of seven members.
11. The City, the Foundation, and the School District agree to jointly select a design team and architect. 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 Parties 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:
  - 500-750 seat theatre, including an orchestra pit, sound and fly and lighting systems.
  - Lobby, box office, concessions, restrooms and coat room.
  - Scenery shops, costume shops and property shops sufficient to accommodate the needs of the Parties.
  - Rehearsal halls sufficient to accommodate the needs of the Parties.
  - Administrative offices sufficient to accommodate the needs of the Parties.
  - Storage space sufficient to accommodate the needs of the Parties.
  - Conference room/classroom space sufficient to accommodate the needs of the Parties.
  - A smaller performance/experimental space sufficient to accommodate the needs of the Parties.
12. The City, Foundation, and School District 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.

13. The City, the Foundation, 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.
14. The Parties acknowledge that this is a preliminary agreement setting forth the parameters of future, detailed negotiations. Either the School District or the Foundation 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. However, if the School District and the Foundation agree to make expenditures relating to the study of a joint use facility prior to executing a formal agreement, the Foundation and the School District agree that the costs of those expenditures will be a joint obligation.
15. 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 Foundation

Rapid City Area School District

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

City of Rapid City

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_