

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

This Lease and Management Agreement (“Agreement”) is made effective the ____ day of _____, 2012, 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 Museum Alliance of Rapid City, Inc., a South Dakota non-profit corporation, hereinafter referred to as the “MARC,” of 222 New York Street, Rapid City, SD 57701.

WHEREAS, the City desires to obtain the services of MARC to manage and operate the Journey Museum; and

WHEREAS, MARC wishes to manage and operate the Journey Museum on behalf of the City; and

WHEREAS, the real property leased hereunder is owned by the City; and

WHEREAS, the City is committed to supporting the success of the Journey Museum; and

WHEREAS, it would be mutually beneficial for the City to lease the Journey Museum to MARC and for MARC to manage the Journey Museum 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 MARC will possess, manage and control the operations of the Journey Museum for the City and to set forth the obligations of each party.

3. Lease of Property. The City agrees to lease to MARC the following described property:

**Lots 1-16, S½ of vacated Philadelphia St & N½ of vacated alley adjacent to said lots, all in Block 28 of the Original Town of Rapid City; and
Lots 17-32, N½ of vacated Philadelphia St & S½ of vacated alley adjacent to said lots, all in Block 18 of the Original Town of Rapid City, Pennington County, South Dakota**

commonly known as 222 New York Street. MARC shall be entitled to exclusive possession of the property, which shall be herein referred to as the "Journey Museum" or "the leased premises."

4. Consideration. MARC agrees to pay the City One Dollar (\$1) rent per year for the leased premises. MARC shall provide to City a detailed budget proposal listing operating expenses and management costs no later than March 1 of each year. The City agrees to pay MARC a Management Fee each year, which fee shall be set by the City Council according to its yearly budget. This Management Fee shall be inclusive of all responsibilities and payments required of City under this Agreement, with the exception of the payment of utilities, major repairs pursuant to paragraph 13, and maintaining property insurance. 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. Automatic renewals will continue until this Agreement is either terminated according to its terms or December 31, 2032, at which time no further automatic renewals will occur. 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. MARC agrees to manage the Journey Museum consistent with the terms of this Agreement. MARC shall maintain offices in the Journey Museum 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 MARC.

7. Monetary Donations. It is specifically understood that MARC, in cooperation with other groups and associations, conducts fund drives and accepts donations for operation of the Journey Museum. All donations of money deposited by individuals in donation boxes at the Journey Museum shall be retained by MARC.

8. Artifact Donations. All donations of museum objects or artifacts to the Journey Museum and accepted by MARC shall become the property of MARC. MARC shall make provisions that all such property received is cataloged, proper storage maintained and insurance obtained. It is further agreed that any objects donated shall be displayed consistent with their donation conditions and with the use of the Journey Museum. MARC shall provide proper care and maintenance of all artifacts in inventory.

9. Accounting. MARC shall provide a copy of its yearly audit to the City on or before June 1 of each year. In addition, MARC shall make an accounting after the close of each fiscal year of all donations to the Journey Museum during the preceding year.

10. City Use of Journey Museum. MARC 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. MARC shall maintain records of the users of the building and shall report on the next working day any loss to the building, 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, regardless of their nature, installed by MARC or any lessee in the Journey Museum shall become and remain the property of the City. Permanent fixtures shall not include the affixing of displays of art, artifacts, exhibits or other pieces of the various collections housed or on loan to the museum.

13. Maintenance. MARC shall be responsible for maintenance and upkeep of the building and the grounds. City shall be responsible for any replacement of the major building systems, including water and sewer infrastructure, heating, ventilation, humidity and cooling systems, and the exterior of the building.

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 and the permanent fixtures installed therein. This requirement shall not require the City to repair, replace or rebuild at the current or any other location should the property be damaged significantly or destroyed. MARC 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 MARC.

16. Liability and Indemnification. MARC 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 MARC in the occupation or use of the leased premises by MARC, its officers, directors, agents, volunteers and employees.

MARC 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 MARC 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 MARC shall fail to secure said insurance, if said insurance shall lapse, or if any other default of this Section occurs, MARC 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 fiscal year the City shall fail to appropriate funds to pay for the services to be provided hereunder, then and in that event MARC 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 MARC's officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership, joint venture, or other legal entity. No agent of MARC shall be the agent of the City, and MARC 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.

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

Should the City choose to exercise its option to terminate this Agreement, such termination will be effective upon mailing of written notice to MARC, at which time MARC shall have no further rights under this Agreement.

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

Museum Alliance of Rapid City
Attn: Executive Director
222 New York Street
Rapid City, SD 57701

23. Change of Contacts. MARC 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. MARC 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. MARC 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

ATTEST

Mayor

Finance Officer

(SEAL)

MUSEUM ALLIANCE OF RAPID CITY, INC.

By _____

Its CHAIRMAN OF THE BOARD