November 27, 2019

Rapid City Common Council
300 Sixth Street
Rapid City, SD 57701

Re: Transfer of Arts Funding Distribution from Allied Arts to Rapid City Fine Arts Council

Dear Council Members:

The 2020 budget process (August 2019) went off nearly without a hitch. The hitch, however, was the allocation and distribution of $75,000 in City General Funds to local arts programs through the Arts Contingency Fund or Allied Arts organization. This reduction in General Fund allocation was significant in that it resulted in aggressive lobbying tactics, name-calling, and exposed a significant dispute between the Allied Arts and Rapid City Arts Council.

This dispute allowed for members of the public to become engaged in the debate, either on social media or behind the scenes. To say it was not a bright spot for Rapid City would be a bit of an understatement. I do however, appreciate the premise of the debate in that, it allows the public to both express how they feel about arts and culture in Rapid City, as well as highlighting how petty some of the argument was.

I've struggled with this matter for no less than two years, and ultimately I have made a decision to propose local arts funding to be handled differently in 2020. I have met with board members of the Allied Arts as well as board members from the Rapid City Arts Council to share my thoughts and conclusions with them. As a result, I will be forwarding to the City Council for approval, a one-year agreement with the Rapid City Arts Council to distribute City General Funds during 2020 to local arts organizations and programs. Naturally, the Allied Arts is disappointed with my decision.

The Rapid City Arts Council board has read through the proposed agreement, which is an identical agreement to the one between the City and the Allied Arts for 2019, and have agreed to its terms. Specifically, they agree local arts programs and organizations important to the City should be supported with City funds.
I should let you know, for the past four months, I have been contacted by some of our local arts organizations currently being funded through the Allied Arts, as well as citizens who support arts and culture in Rapid City and have been encouraged by them to move funding distribution to the Rapid City Arts Council.

As a result of the meetings that have taken place over the last several months, there should be no surprises with this new proposal, especially for the Allied Arts or Rapid City Arts Council organizations.

Although likely unnecessary, I feel it's important to highlight the fact that the partnership between the City of Rapid City and the Rapid City Arts Council is clearly defined in Rapid City Municipal Ordinance, Chapter 2.80.010 – 2.80.060. Specifically, under 2.80.050: “The Common Council of the City designates the Rapid City Fine Arts Council to receive and distribute funds donated to the Rapid City Fine Arts Council on behalf of the Rapid City Community.”

The 2020 arts and culture agreement will be on the December 16th City Council agenda. I urge your support and approval of this contract. Please contact me if you have any questions or concerns about this item.

Sincerely,

Steve Allender,
Mayor, Rapid City

Enclosures:

  Encl. 1 - Chapter 2.80 Rapid City Arts Council
  Encl. 2 – Agreement Between the City of Rapid City and Fine Arts Council
CHAPTER 2.80: RAPID CITY ARTS COUNCIL

Section

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2.80.020 Purpose.
2.80.030 Duties.
2.80.040 Duty to advise city.
2.80.050 Funds.
2.80.060 Rapid City Fine Arts Council designated as organization to establish and manage a voluntary permit system for Art Alley.

2.80.010 Findings.

A. The artist and artistic institutions of the Rapid City community contribute to and provide cultural, educational, entertainment and recreational benefits available to and used by the citizens of the Rapid City community.

B. The establishment of the Rapid City Fine Arts Council has promoted and encouraged public programs to further the development and public awareness of and interest in the arts which is essential to the public welfare.

(Prior code §§ 2-545, 2-546)

2.80.020 Purpose.

The Common Council of the city designates the Rapid City Fine Arts Council as the organization to assist the city in promoting and encouraging public programs to further the development and awareness of and interest in the arts and to act in advisory capacity to the city in connection with the artistic and cultural development of the Rapid City community.

(Prior code § 2-547)

2.80.030 Duties.

In furtherance of the objectives of this chapter, the Rapid City Fine Arts Council is to initiate, sponsor and conduct public programs to further the development and awareness of, and interest in, the arts.

(Prior code § 2-548)
2.80.040 Duty to advise city.

The Rapid City Fine Arts Council is to advise and assist the city in connection with such other artistic activities as may be referred to it by the city.

(Prior code § 2-550)

2.80.050 Funds.

The Common Council of the city designates the Rapid City Fine Arts Council to receive and distribute funds donated to the Rapid City Fine Arts Council on behalf of the Rapid City community.

(Ord. 2969 (part), 1992: prior code § 2-549)

2.80.060 Rapid City Fine Arts Council designated as organization to establish and manage a voluntary permit system for Art Alley.

The Common Council delegates to the Rapid City Fine Arts Council the authority to manage painting or other artistic expression incorporating privately owned buildings and property in the alley commonly known as “Art Alley” on the block bounded by Main Street, St. Joseph Street, and 6th and 7th streets. In order to carry out its responsibility, the Rapid City Fine Arts Council is authorized to work with the neighboring property owners to establish a permit system for artists wishing to display art work on the buildings and property adjacent to the alley. Participation in the program by the private property owners neighboring the alley will be voluntary. Any property owner who wishes to not participate in the program, or who does not want art displayed on their property, has no obligation to participate. If people violate the rules of the permitting system the Fine Arts Council has the authority to revoke or suspend the person’s permit and may refuse to issue the person a permit in the future. Any person who violates their permit by doing work in an area not authorized by the permit or who is painting or otherwise doing work on a building or property without a permit can also be charged criminally with vandalism or any other appropriate charges related to the destruction or defacing of private property as appropriate.

(Ord. 6102, 2016)
AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE RAPID CITY FINE ARTS COUNCIL, INC. FOR GRANT PROGRAM ADMINISTRATION

This Agreement is made by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (the "City"), and the RAPID CITY FINE ARTS COUNCIL, INC., a South Dakota non-profit corporation, of 713 7th Street, Rapid City, SD 57701 (the "Arts Council").

WHEREAS, the City is committed to funding the arts in Rapid City; and

WHEREAS, Arts Council has the necessary expertise to help administer City funding for the arts; and

WHEREAS, the City has appointed the Arts Council to perform the services provided herein pursuant to Rapid City Municipal Code Chapter 2.80; and

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

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 Arts Council will help administer City arts funding.

3. City Payment. The City agrees to pay Arts Council the total amount of $75,260 divided into quarterly installments, for the 2020 calendar year. In exchange for administering this City grant, Arts Council shall be allowed to keep sufficient funds to cover the administrative costs of administering the grant, not to exceed 10% of the total grant amount.

4. Arts Council Services. Arts Council will provide the following services to the City in exchange for the payment provided in ¶ 3:
   a. Use City grant money to fund both established arts agencies and emerging artists in Rapid City;
   b. Accept and review applications for grant funds from arts agencies and artists;
   c. Encourage public involvement in the arts and cultural community through promotion of the arts and art-oriented events; and
   d. Ensure that all City funds are used within the City limits.

5. Term. The term of this Agreement shall begin on the date of execution, and shall end on December 31, 2020. This Agreement may be cancelled by either party by delivering written notice to the other at least 30 days prior to payment of the next quarterly installment. In the event of early termination, Arts Council shall still be bound by the terms of this Agreement in distributing any City funds already received.
6. Reporting Requirements. Prior to the expiration of this Agreement, Arts Council shall provide an end-of-year report detailing the disbursement of all City funds, including administrative costs. This report shall include sufficient assurance that all funds were used within City limits.

7. 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                      Rapid City Fine Arts Council
   Attn: Finance Officer                  Attn: Executive Director
   300 Sixth Street                      713 Seventh Street
   Rapid City, SD 57701                   Rapid City, SD 57701

8. Change of Contacts. Arts Council 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.

9. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this Agreement 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.

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

11. 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.

12. Integration. This Agreements 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.

13. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

14. 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.
15. **Construction.** The language in all parts of this Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement.

16. **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.

17. **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 Agreement, 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 ______________, 2019.

CITY OF RAPID CITY

ATTEST

________________________
Mayor

Finance Officer

(SEAL)

RAPID CITY FINE ARTS COUNCIL, INC.

By _______________________

(signature)

________________________

(printed name)

Its _______________________

(title)