AGREEMENT BETWEEN THE CITY OF RAPID CITY AND SENIOR CITIZENS INCORPORATED D/B/A CANYON LAKE ACTIVITIES CENTER FOR THE USE OF CITY VISION FUNDS TO CONSTRUCT PICKLEBALL COURTS AT ITS FACILITY ON CANYON LAKE DRIVE.

This Agreement is made and entered into this ___ day of June, 2019, by and between the CITY OF RAPID CITY (the “City”), a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, and SENIOR CITIZENS INCORPORATED d/b/a Canyon Lake Activities Center (“Canyon Lake”), a South Dakota non-profit corporation, located at 2900 Canyon Lake Drive, Rapid City 57702.

RECITALS

WHEREAS, the City solicited potential community projects to receive funding from the City’s Vision Account; and

WHEREAS, Canyon Lake, a non-profit corporation with over 900 members, submitted a request to have the City’s Vision Account help fund the construction of pickle ball courts at its activity center for use by members of the community; and

WHEREAS, pickleball is currently the fastest growing sport in America; and

WHEREAS, Rapid City currently has few pickleball courts for people desiring to play the sport; and

WHEREAS, the construction of pickleball courts at Canyon Lake will not only help meet current demand in the community, but will also help Rapid City attract pickleball tournaments in the future; and

WHEREAS, the City formed a citizen committee to review and make funding recommendations regarding the proposed community projects which sought money from the Vision Account; and

WHEREAS, the citizen committee recommended funding Canyon Lake’s request for the proposed project; and

WHEREAS, the City Council approved Canyon Lake’s project to receive funding at its January 31, 2019 meeting; and

WHEREAS, the parties desire to memorialize under what terms and conditions the City funds will be made available to fund the Canyon Lake project.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. The City will expend up to $49,999 out of the City’s Vision Account to help fund construction of pickleball courts with fencing and lighting consistent with Canyon Lake’s
application for Vision funding and supporting materials which were submitted to, and reviewed by, the City. A copy of Canyon Lake’s application and supporting materials are hereby incorporated into this Agreement. The City’s contribution will be used primarily for construction of the courts and not for any of the design costs. The Vision Account award is payable in 2019. Any funds not reimbursed in the year identified may be carried over and reimbursed in the subsequent year. The total cost of completing the project exceeds the amount the City has awarded to Canyon Lake and the parties acknowledge and understand that if there is a shortfall in the funds needed to complete the project, the City has no further obligation to allocate any additional funds. In the event of a shortfall in the funds needed to complete the project, Canyon Lake will either need to make changes to the scope of the project that decrease the total project costs, or make up the difference in the total cost out of other funding sources.

2. Canyon Lake will be solely responsible for designing and constructing the project contemplated in this Agreement. Canyon Lake has indicated to the City it has sufficient funds to cash flow this project and receive periodic reimbursement from the City. Based on Canyon Lake’s ability to pay the initial design and construction costs out of its own funds, the parties have agreed that Canyon Lake will invoice the City Finance Office for covered work once it has been completed. The City will review the payment invoice and then reimburse Canyon Lake for those expenditures up to the amounts identified in Paragraph 1 of this Agreement. Canyon Lake agrees to provide to the City with any request for reimbursement sufficient documentation so that the City can insure the payment is for the project, is consistent with the proposal identified in Canyon Lake’s application, and the contractors have already been paid for the invoices being submitted. If the City identifies an issue with a request for reimbursement, the City may withhold approval of such reimbursement until the issues which have been identified are resolved, or may proceed with processing the payment, but withhold any disputed amounts from future payments if the issue is not resolved in a reasonable time period. The City agrees to work diligently with the Canyon Lake and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to Canyon Lake.

3. If Canyon Lake substantially alters the project from the presentation it made to obtain funding, fails to meet any of the deadlines established in this Agreement, or suspends construction on the project for more than four (4) months once construction has commenced, Canyon Lake shall be in material breach of this Agreement. If Canyon Lake is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to Canyon Lake of such breach and Canyon Lake shall have thirty (30) days to remedy or cure such breach. To the extent that Canyon Lake has incurred reimbursable expenses under this Agreement prior to its termination by the City, the City will reimburse Canyon Lake for those expenses pursuant to the terms of this Agreement.

4. Canyon Lake acknowledges that the City’s commitment to provide $49,999 towards the completion of this project is good and sufficient consideration for the promises it has made herein. Canyon Lake further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges that Canyon Lake’s commitment to construct a recreational facility for community members constitutes sufficient good and valuable consideration for the promises it has made herein. The City further acknowledges that
absent the promises it has made in this Agreement, Canyon Lake would not have undertaken other financial obligations necessary to fund the project described herein.

5. If any provisions or terms of this Agreement are held to be unconstitutional, invalid, or otherwise unenforceable by any court or tribunal having jurisdiction over the parties the remainder of this Agreement shall remain in full force. Any such determination of invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision.

6. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

7. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The terms and conditions of this Agreement may be modified only in a written amendment that is duly executed by the parties hereto. Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Subject to this restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

8. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

9. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of South Dakota. Any action to interpret or enforce this Agreement shall be venued in the Seventh Judicial Circuit in Pennington County, South Dakota.

10. This Agreement constitutes the entire agreement of the parties regarding this matter. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or have been intentionally omitted.

    Dated this ___ day of June, 2019.
CITY OF RAPID CITY

____________________________________
Steve Allender, Mayor

ATTEST:

___________________________________
Pauline Sumption, Finance Officer

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SENIOR CITIZENS INC.

____________________________________
Rudy Mooney, President of the Board

____________________________________
Michael Garfield, Center Director

State of South Dakota  )
ss.
County of Pennington  )

On this the _____ day of ________________, 2019 before me, the undersigned officer personally appeared Rudy Mooney, who acknowledged himself to be the President of the Senior Citizens Inc., d/b/a Canyon Lake Activities Center, Board of Directors, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

________________________________
Notary Public, ____________________
My Commission Expires: ____________________
(SEAL)

State of South Dakota  )
ss.
County of Pennington  )

On this the _____ day of ________________, 2019 before me, the undersigned officer personally appeared Michael Garfield, who acknowledged himself to be the Center Director of Senior Citizens Inc., d/b/a Canyon Lake Activities Center, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

________________________________
Notary Public, ____________________
My Commission Expires: ____________________
(SEAL)