AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE RAPID CITY CLUB FOR BOYS, INC. FOR THE USE OF CITY VISION FUNDS TO RENOVATE TWO OF ITS FACILITIES.

This Agreement is made and entered into this ___ day of September, 2020, by and between the CITY OF RAPID CITY (the “City”), a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, and the RAPID CITY CLUB FOR BOYS (the “Club for Boys”), a South Dakota non-profit corporation, located at 320 N. 4th Street, Rapid City 57701.

RECITALS

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

WHEREAS, the Club for Boys, a 501(c)(3) corporation, submitted a request to have the City’s Vision Account help fund renovations to its facility at 320 N. 4th Street as well as the adjacent Erickson Building facing 3rd Street; and

WHEREAS, the Club for Boys provides educational, recreational, and support programs for approximately 1,300 boys in the community ranging from 6-17 years of age; 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 the Club for Boys receive $810,000 in funding spread over two years for the proposed project; and

WHEREAS, the City Council reviewed and ratified the citizen committee’s recommendations 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 Club for Boys renovation project.

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

1. The City will expend up to $810,000 out of the City’s Vision Account to help fund the renovation of the Club for Boys property at 320 N. 4th Street as well as the adjacent Erickson Building consistent with the Club for Boys application and supporting materials which were submitted to, and reviewed by, the City. A copy of the Club for Boys’ application and supporting materials are hereby incorporated into this Agreement. The City’s contribution will be used primarily for construction of the expanded building and will not be used to reimburse the Club for Boys for any of the design costs. The Vision Account award is payable over two (2) years. The maximum amount to be reimbursed in each year is as follows: 2019 - $405,000; 2020 - $405,000. Any funds not reimbursed in the year identified may be carried over and reimbursed in the subsequent year in addition to the amount identified for the subsequent year. The total cost of
completing the project exceeds the amount the City has awarded to the Club for Boys 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, the Club for Boys 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. The Club for Boys will be solely responsible for designing and constructing the project contemplated in this Agreement. Based on the Club for Boys ability to pay the initial design and construction costs out of its own funds, the parties have agreed that the Club for Boys will invoice the City Finance Office for covered work once it has been completed. The City will review the payment invoice and then reimburse the Club for Boys for those expenditures up to the amounts identified in Paragraph 1 of this Agreement. The Club for Boys 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 the Club for Boys’ application, and the contractors have already been paid for the invoices being submitted. The Club for Boys acknowledges that processing multiple invoices places an administrative burden on the City’s Finance Office and agrees to work with the City to limit the amount of reimbursement requests as much as possible. Ideally, the Club for Boys will fund the project from other sources and be reimbursed once each year for the qualifying expenditures once the maximum reimbursement amount for that year has been reached. 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 Club for Boys and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to the Club for Boys.

3. Due to the use of public funds in the construction of this project, the Club for Boys agrees that the selection of contractors for the construction of the improvements contemplated by this Agreement shall comply with all provisions of South Dakota law regarding the expenditure of public funds. These provisions are contained in Chapters 5-18A through 5-18D of the South Dakota Codified Laws. The City specifically acknowledges that the Club for Boys may engage a construction manager, a construction manager at risk, or engage in a design-build process consistent with state law. The Club for Boys agrees to provide the City with any and all documentation necessary to demonstrate to the City’s satisfaction that it has complied with this provision.

4. If the Club for Boys 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, the Club for Boys shall be in material breach of this Agreement. If the Club for Boys is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to the Club for Boys of such breach and the Club for Boys shall have thirty (30) days to remedy or cure such breach. To the extent that the Club for Boys has incurred reimbursable expenses under this Agreement prior to its termination by the City, the
City will reimburse the Club for Boys for those expenses pursuant to the terms of this Agreement.

5. The Club for Boys acknowledges the City’s commitment to provide $810,000 towards the completion of this project is good and sufficient consideration for the promises it has made herein. The Club for Boys further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges that the Club for Boys commitment to renovate its facilities so that it may continue to provide education and support services for children in the community, especially for children from low income families, 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, the Club for Boys would not have undertaken other financial obligations necessary to fund the project described herein.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 September, 2019.

CITY OF RAPID CITY

____________________________________
Steve Allender, Mayor

ATTEST:

___________________________________
Pauline Sumption, Finance Officer

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RAPID CITY CLUB FOR BOYS, INC.

Mark Hasvold, President of the Board

Doug Herrmann, Executive Director

State of South Dakota  )
ss.
County of Pennington  )

On this the _____ day of _________________, 2019 before me, the undersigned officer personally appeared Mark Hasvold, who acknowledged himself to be the President of the Club for Boys of Rapid City, 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 Doug Herrmann, who acknowledged himself to be the Chief Executive Officer of the Club for Boys of Rapid City, Inc., 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)