

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BLACK HILLS WORKS,
FOR THE USE OF CITY VISION FUNDS TO HELP CONSTRUCT ITS UNIFIED
CENTER PROJECT AT 3603 RANGE ROAD.**

This Agreement is made and entered into this ___ day of June, 2020, by and between the CITY OF RAPID CITY (the “City”), a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, and BLACK HILLS WORKS, INC. (“Black Hills Works”), a South Dakota non-profit corporation, located at 3650 Range Road, Rapid City, South Dakota, 57702.

RECITALS

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

WHEREAS, Black Hills Works, a 501(c)(3) corporation, which provides services and vocational opportunities to adults with disabilities submitted a request to have the City’s Vision Account help defray the cost of converting and renovating its current Learning Institute facility at 3603 Range Road into a new “Unified Center”; and

WHEREAS, the new facility will help fulfill the daily needs of a portion of Black Hills Works day services and will include, recreation and wellness space with 24 hour fitness access which will be available to the community, as well as clients, along with classrooms and meeting spaces; 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 Black Hills Works receive \$450,000 in funding spread over two (2) 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 Black Hills Works project.

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

1. The City will expend up to \$450,000 out of the City’s Vision Account to help fund the construction of the “Unified Center” identified in Black Hills Works’ funding application. A copy of Black Hills Works’s application and supporting materials are hereby incorporated into this Agreement. The City’s contribution will be used to defray the cost of constructing the improvements identified in Phase I of the application, with the exception of the locker room renovations which were funded through use of CDBG funds. The Vision Account award is

payable over two (2) years. The maximum amount to be reimbursed in each year is as follows: 2019 - \$225,000; 2020 - \$225,000. 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 parties acknowledge the funds the City is committing to help construct this project constitute only a portion of the total funds needed to complete the project and the City is under no legal obligation to provide any additional funds. In the event of a shortfall in the funds needed to complete the project, Black Hills Works 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. Black Hills Works will be solely responsible for designing and constructing the project contemplated in this Agreement. Black Hills Works has indicated to the City it has sufficient funds to cash flow this project and receive periodic reimbursement from the City. The City will review the payment invoice and then reimburse Black Hills Works for those expenditures up to the amounts identified in Paragraph 1 of this Agreement. Black Hills Works 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 Black Hills Works' application, and the contractors have already been paid for the invoices being submitted. Black Hills Works 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, Black Hills Works 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 Black Hills Works and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to Black Hills Works.

3. Due to the use of public funds in the construction of this project, Black Hills Works 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 Black Hills Works may engage a construction manager, a construction manager at risk, or engage in a design-build process consistent with state law. Black Hills Works 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 Black Hills Works 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, Black Hills Works shall be in material breach of this Agreement. If Black Hills Works is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to Black Hills Works of such breach and Black

Hills Works shall have thirty (30) days to remedy or cure such breach. To the extent that Black Hills Works has incurred reimbursable expenses under this Agreement prior to its termination by the City, the City will reimburse Black Hills Works for those expenses pursuant to the terms of this Agreement.

5. Black Hills Works acknowledges the City's commitment to provide \$ 450,000 towards the completion of this project is good and sufficient consideration for the promises it has made herein. Black Hills Works further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges that Black Hills Works commitment to construct the improvements identified in its application 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, Black Hills Works 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 June, 2020.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

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BLACK HILLS WORKS, INC.

Rick Messer, President of the Board

Brad Saathoff, CEO

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2020 before me, the undersigned officer personally appeared Rick Messer, who acknowledged himself to be the President of Black Hills Works, Inc., 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 _____, 2020 before me, the undersigned officer personally appeared Brad Saathoff, who acknowledged himself to be the Chief Executive Officer of Black Hills Works, 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)