AGREEMENT BETWEEN THE CITY OF RAPID CITY AND CENTRAL STATES FAIR, INC. FOR THE USE OF CITY VISION FUNDS TO RENOVATE THE SOULE BUILDING, FINE ARTS BUILDING, AND THE LIVESTOCK BARNs

This Agreement is made and entered into on this ______ day of July, 2022, by and between the CITY OF RAPID CITY (the “City”), a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, and CENTRAL STATES FAIR, INC., a South Dakota non-profit corporation (hereinafter “Central States Fair”), of 800 San Francisco Street, Rapid City 57701.

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

WHEREAS, Central States Fair submitted a request to have the City’s Vision Account help fund renovations to its Soule Building, Fine Arts Building, and several livestock barns.

WHEREAS, the Central States Fair provides youth livestock shows and events to support educational, entertainment, and economic benefits to the community; 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, Central States Fair requested $1,000,000.00 in funding and the citizen committee recommended $980,000.00 in funding for the proposed project; and

WHEREAS, The City Council reviewed and ratified the citizen committee’s recommendations at its January 10, 2022 meeting; and

WHEREAS, the parties desire to memorialize under what terms and conditions the City funds will be made available to fund the Central States Fair renovation project.

NOW THEREFORE, the parties covenant and agree as follows:

1. The City will expend up to $980,000 out of the City’s Vision Account to help fund the renovation of Central States Fair’s property at 800 San Francisco Street consistent with Central States Fair’s application and supporting materials which were submitted to, and reviewed by, the City. A copy of Central States Fair’s application and supporting materials are hereby incorporated into this Agreement. The City’s contribution will be used primarily for renovation of the described buildings and will not be used to reimburse Central States for any of the design costs.

2. Central States Fair will be solely responsible for designing and constructing the project contemplated in this Agreement in compliance with the requirements in South Dakota
Codified Law Chapter 5-18A through 5-18D, as more specifically detailed below. Upon completion of work, Central States Fair shall submit invoices to the City Finance Office, along with documentation showing it followed the bid requirements and process in SDCL Chapter 5-18A through 5-18D and proof the vendor(s) have been paid. The City shall make up to three reimbursement payments to Central States Fair as mutually agreed upon by the Parties. The total cost of completing the project may exceed the amount the City has awarded to Central States Fair and the parties acknowledge and understand if there is a shortfall in the funds needed to complete the project, the City has no further obligation to allocate additional funds. In the event of a shortfall in the funds needed to complete the project, Central States Fair will either make changes to the scope of its project or renovations to decrease the total cost, or make up the difference in the total cost from other funding sources. In the event the project costs are less than the awarded amount of $980,000, any remaining balance of the award shall remain in the City’s Vision account for future allocation phases.

3. Due to the use of public funds to carry out this project, Central States Fair agrees the selection of contractors or vendors for the improvements contemplated by this Agreement shall comply with all provisions of South Dakota law regarding the expenditure of public funds contained in South Dakota Codified Law Chapters 5-18A though 5-18D. Central States Fair agrees to provide the City with any and all documentation necessary to demonstrate to the City’s satisfaction it has complied with this provision.

4. If Central States Fair 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 or completion of the project for more than four (4) months once construction or renovation has commenced, Central States Fair shall be in material breach of this Agreement. If Central States Fair is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to Central States Fair of such breach and Central States Fair shall have thirty (30) days to remedy or cure such breach. To the extent that Central States Fair has incurred reimbursable expenses under this Agreement prior to its termination by the City, the City will reimburse Central States Fair for those expenses pursuant to the terms of this Agreement.

5. Central States Fair acknowledges the City’s commitment to provide $980,000 toward the completion of the project is good and sufficient consideration for the promises it has made herein. Central States Fair further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges Central States Fair’s commitment to renovate its Soule Building, Fine Arts Building, and several livestock buildings to allow it to better showcase South Dakota’s top two industries in agriculture and tourism, constitutes sufficient good and valuable consideration for the promises it has made 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 and effect. 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 take place 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 any part of this Agreement. All prior discussions and negotiations are merged in this this Agreement or have been intentionally omitted.

Dated this ______ day of July, 2022.

CITY OF RAPID CITY

__________________________
Steve Allender, Mayor
ATTEST:

___________________________________
Pauline Sumption, Finance Director

State of South Dakota )
) ss.
County of Pennington )

On this the _____ day of ________________, 2022, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Director.

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

(SEAL) Notary Public - South Dakota
My Commission Expires ________________

CENTRAL STATES FAIR, INC.

__________________________________________
Ron Jeffries, General Manager

State of South Dakota )
) ss.
County of Pennington )

On this the _____ day of ________________, 2022, before me, the undersigned officer, personally appeared Ron Jeffries, who acknowledged himself to be the General Manager of Central States Fair, a domestic non-profit corporation, and that he as such General Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as General Manager.
IN WITNESS WHEREOF I hereunto set my hand and official seal.

(SEAL)

Notary Public - South Dakota
My Commission Expires ________________