

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RURAL AMERICA
INITIATIVES INC. FOR THE USE OF CITY VISION FUNDS TO CONSTRUCT A
NEW HEAD START FACILITY.**

This Agreement is made and entered into this ___ day of October, 2017, by and between the CITY OF RAPID CITY (the “City”), a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, and RURAL AMERICA INITIATIVES, INC., (“RAI”), a South Dakota non-profit corporation, located at 628 ½ Sixth Street, Rapid City 57701.

RECITALS

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

WHEREAS, RAI, a 501(c)(3) corporation, submitted a request to have the City’s Vision Account help fund a new facility to house its head start programs; and

WHEREAS, RAI began providing head start programs in 1991 and since that time the demand for the services it provides has continued to grow; and

WHEREAS, When RAI started. it provided services out of modular buildings which were only meant to last 10-12 years; and

WHEREAS, 26 years RAI has outgrown these facilities and has been forced to house its programs in rental space in various locations in order to meet the demand for its services; and

WHEREAS, RAI has proposed constructing a new 28,400 sq.ft. facility in order to bring its programs back under one roof and accommodate the future growth in demand for its services; and

WHEREAS, the estimated cost of RAI’s new head start facility is approximately \$7.1 million dollars; 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 that RAI’s proposed project receive \$2 million towards construction of its new facility; and

WHEREAS, the City Council reviewed and ratified the citizen committee’s recommendations at its December 5, 2016, meeting; and

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

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

1. The City will expend up to \$2,000,000 out of the City's Vision Account to help fund construction of a new head start facility consistent with RAI's application and supporting materials which were submitted to, and reviewed by, the City. A copy of RAI's application and supporting materials are hereby incorporated into this Agreement. The City's contribution will be used for construction of the building and will not be used to reimburse RAI for any of the design costs. If the cost of completing RAI's new facility comes in higher than the amount the City has authorized, RAI will either need to make changes to the project that bring the cost under this amount or make up the difference in cost out of other funding sources. The parties acknowledge that the City's contribution will not be sufficient to complete the project and RAI is currently engaged in a capital campaign to raise the remaining funds needed to complete the project.
2. RAI will be solely responsible for designing and constructing the project contemplated in this Agreement. RAI has indicated that it has, or will have, sufficient funds available in order to construct this project. Based on RAI's ability to pay the initial design and construction costs out of its own funds, the parties have agreed that RAI will invoice the City Finance Office for covered work once it has been completed. The City will review the payment invoice and then reimburse RAI for those expenditures up to the amount identified in Paragraph 1 of this Agreement. RAI 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 RAI'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 RAI and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to RAI.
3. Due to the use of public funds in the construction of this project, RAI 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 RAI may engage a construction manager, a construction manager at risk, or engage in a design-build process consistent with state law. RAI 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. RAI acknowledges that the City's intent when it solicited community projects seeking funding from the Vision Account was for the projects selected to be constructed in 2017. RAI agrees to commence construction of the facility by September 1st 2018. If RAI is not going to be able to commence construction by this date, it acknowledges that it will need to seek an extension of time from the City Council or be in breach of this Agreement pursuant to paragraph five.

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

6. RAI acknowledges that the City's commitment to provide \$2,000,000 towards the completion of this project is good and sufficient consideration for the promises it has made herein. RAI further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges that RAI's commitment to construct a facility that is approximately five million dollars in value 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, RAI would not have undertaken other financial obligations necessary to fund the project described herein.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 October, 2017.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

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RURAL AMERICA INITIATIVES, INC.

Carol Marshall-Coon, Chairperson of the Board

Bruce Long Fox, Executive Director

State of South Dakota)
 ss.
County of _____)

On this the ____ day of _____, 2017 before me, the undersigned officer personally appeared Carol Marshall-Coon, who acknowledged herself to be Chairperson of the Board of Directors for RAI, 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 _____, 2017 before me, the undersigned officer personally appeared Bruce Long Fox, who acknowledged himself to be the Executive Director of RAI, 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)