AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RAPID CITY AREA SCHOOLS FOR THE PURCHASE OF THE SCHOOL DISTRICT'S OWNERSHIP INTEREST IN THE CITY SCHOOL ADMINISTRATION CENTER.

This Agreement is made and entered into on this ___ day of December, 2017, by and between the CITY OF RAPID CITY (herein after the “City”), a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, and RAPID CITY AREA SCHOOL DIST. NO. 51-4 (a/k/a Rapid City Area Schools and herein after referred to as “RCAS”), a duly organized school district pursuant to the laws of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701.

RECITALS

WHEREAS, the City and RCAS entered into an agreement in August of 1984 related to the construction, ownership, and operation of a joint administration building; and

WHEREAS, as a result of this agreement and several amendments thereto, the parties currently own and operate the City School Administration Center (“CSAC”) located at 300 Sixth Street, Rapid City, South Dakota; and

WHEREAS, Rapid City has experienced significant growth in both population and area over the thirty years the CSAC has been jointly owned and occupied by the parties which has increased the demand for service on both organizations; and

WHEREAS, as a result of this growth, the space needs of both organizations have surpassed the capacity of the current building; and

WHEREAS, over the years both organizations have pursued creative solutions to address the lack of space in the CSAC such as converting storage areas, hallways, and meeting rooms, into employee work spaces and moving employees to other locations, but the parties are running out of areas in the CSAC that can be converted to additional work space; and

WHEREAS, the current lack of space in the CSAC has necessitated over the last few years the parties to discuss how to best address their anticipated space needs in order to accommodate future growth; and

WHEREAS, The Rapid City YMCA (“YMCA”) has decided to purchase the former Black Hills Corporation headquarters building in downtown Rapid City in order to consolidate its early education programs in one place; and

WHEREAS, the RCAS has indicated it intends to move into the former Black Hills Corporation building with the YMCA; and

WHEREAS, the RCAS decision to co-locate with the YMCA creates an opportunity for both parties to address their current and future space needs; and
WHEREAS, the parties have obtained two appraisals of the CSAC over the last several years; and

WHEREAS, based on these appraisals and the ownership percentages of the parties established in the original agreements, an agreement has been reached for the City’s purchase of the RCAS’s ownership interest in the CSAC; and

WHEREAS, it is the parties intent to outline the specific terms and conditions of the City’s purchase of the RCAS ownership interest in the CSAC.

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

1. The parties have previously entered into various agreements which establish the parties’ respective rights and obligations related to their joint ownership of the CSAC. The parties’ understand the terms negotiated in the drafting of this Agreement may amend or change some of the parties’ respective rights and obligations regarding the disposition of the CSAC under the original agreements. The parties are fully informed on the terms of these agreements and to the extent that any terms of this Agreement are different than, or inconsistent with, the prior agreements, such changes are intentional and the terms of this Agreement will control.

2. Pursuant to the original agreements and the parties’ respective contributions to the construction of the CSAC, the City owns 65.83% of the building and the RCAS owns 34.17%. The City owns the land upon which the CSAC was constructed and the RCAS have never purchased or reimbursed the City for the land. Therefore, the RCAS is not entitled to any compensation for the value of the land. The parties’ obtained an appraisal prepared by Simpson & Assoc. in 2009 in which the valuation for the building was determined to be $11,990,000. An updated appraisal by Simpson & Assoc. was commissioned in 2016 which determined the valuation for the building was $6,415,000. The parties have agreed to use the average of these two figures ($9,202,500) as the valuation of the building. In recognition of the fact the CSAC is over thirty years old and there is deferred maintenance which needs to be completed in relation to the HVAC, boiler, and air handling systems the parties have agreed to further reduce the value of the building to $8,500,000. Based on this value and the RCAS 34.17% ownership interest, the City agrees to purchase any and all rights, title, and interest RCAS have in the CSAC for the sum of $2,904,450.

3. The City agrees to pay the sum identified in Paragraph 2 as follows:

   a) The City will make a payment of at least $1,500,000 within sixty (60) days of this Agreement being executed by both parties.

   b) The remaining balance due will be paid off in annual payments of at least $260,000. However, the entire remaining balance will be paid off in no more than four (4) years from the date this Agreement has been executed. The parties agree no interest will be imposed on any outstanding balances. The parties also agree the City can pay off early any balance remaining without penalty.
Since the RCAS needs to know if the City is willing to purchase its interests in the CSAC so it can decide how to proceed with the YMCA, time is of the essence. The City has sufficient funds available to pay for the obligations created by this Agreement. It is anticipated the funds to pay for this purchase will come from the City’s Capital Improvements Account, Vision Account, undesignated cash balance, or some combination thereof. Since time is of the essence, the City may designated the specific funding sources for this purchase at a later date with the understanding that once this Agreement is executed the City will be obligated to appropriate the monies necessary to fulfill its obligations herein.

4. RCAS agrees to vacate the building by September 1, 2018. The RCAS will provide the City with a written declaration when it has completely vacated the premises. The written declaration from the RCAS will constitute the official transfer of ownership and any obligations related to insurance, maintenance, or any other joint expenses or obligations placed upon the RCAS pursuant to this Agreement, or any of the previous agreements between the parties, shall cease. The Mayor, on behalf of the City, may grant the RCAS an extension(s) to the date by which the RCAS is required to vacate the premises, subject to the condition the total length of all the extensions granted cannot exceeds six (6) months.

5. The City agrees to accept ownership of the building in its present condition. The RCAS certifies there are no defects or other issues with the condition of the CSAC which have not been disclosed to the City. Upon execution of this Agreement the RCAS agrees it will not make any alterations or improvements to the CSAC in excess of $1,500 without the written permission of the City. The parties further agree the RCAS will not be responsible for any major repairs, or other unusual or unforeseen maintenance expenses upon execution of this Agreement. However, the RCAS will continue to pay for the CSAC’s normal and usual costs for ongoing maintenance or repairs pursuant to the parties’ prior agreements until the building is officially vacated pursuant to Paragraph #4. This provision excludes any repairs or damages caused by the acts or omissions of the RCAS or its employees, agents, or contactors. The parties also agree that this provision excludes expenses related to repairs to the main elevator located in the building lobby as long as the RCAS continues to occupy the building. Notwithstanding this provision, the City acknowledges that it will likely receive more benefit than the RCAS from any repairs to the building and will negotiate in good faith with the RCAS to ensure that the schools contribution for any such repairs for which it is responsible is equitable.

6. RCAS certifies that it has no liens or encumbrances on the property being sold. If any liens or encumbrances do exist, the RCAS agrees to satisfy them prior to officially vacating the property.

7. RCAS agrees to continue and maintain sufficient liability and property insurance coverage for the CSAC and its property therein until such time as the building is officially vacated. The RCAS agrees to assign to the City any insurance proceeds it receives, or is entitled to, for any damages to, or repair or replacement of the CSAC.

8. 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.

9. Both parties have had sufficient opportunity to review this Agreement and consult with legal counsel regarding its terms. As such, 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.

10. 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.

11. 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.

12. 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.

13. This Agreement along with the previous agreements between the parties, subject to any amendments thereto, constitute 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 regarding the City’s purchase of the CSAC from the RCAS are merged into this document or have been intentionally omitted.

Dated this ___ day of December, 2017.

CITY OF RAPID CITY

___________________________________
Steve Allender, Mayor

ATTEST:

___________________________________
Pauline Sumption, Finance Officer