

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND COMMUNITY HEALTH CENTER OF THE BLACK HILLS, INC. FOR THE USE OF CITY VISION FUNDS TO COMPLETE THE CONSTRUCTION OF A SPACE WITHIN THE ORGANIZATIONS CURRENT FACILITY FOR A MENTAL HEALTH POD.**

This Agreement is made and entered into this \_\_\_ day of December, 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 COMMUNITY HEALTH CENTER OF THE BLACK HILLS, INC., (“CHCBH”), a South Dakota non-profit corporation, located at 350 Pine Street, Rapid City 57701.

**RECITALS**

WHEREAS, CHCBH, a 501(c)(3) corporation, submitted a request to have the City’s Vision Account fund the completion of a mental health pod in a currently unfinished shell space at the organizations consolidated facility on Pine Street; and

WHEREAS, the completion of the mental health pod will allow for the expansion of mental health services and better integration with the primary care services already provided by the CHCBH; and

WHEREAS, the estimated cost of this project is approximately \$523,406; 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 CHCBH’s proposed project receive all of the money it requested for design and construction of the mental health pod; 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 CHCBH’s project.

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

1. The City will expend up to \$523,406 out of the City’s Vision Account to help fund the design and construction of a mental health pod at CHCBH’s facility located at 350 Pine Street. This funding is contingent on the project being designed and constructed in a manner consistent with CHCBH’s application and supporting materials which were submitted to, and reviewed by, the City’s Vision Citizen’s Committee. A copy of CHCBH’s application and supporting materials are hereby incorporated into this Agreement. The City’s contribution will be used for design and construction of the space for the mental health pod. If the cost of completing this project comes in higher than the amount the City has authorized, CHCBH will either need to

make changes to the project that bring the cost under this amount, or make up the difference in costs out of other funding sources.

2. CHCBH will be solely responsible for designing and constructing the project contemplated in this Agreement. Based on CHCBH's ability to pay the initial design and construction costs out of its own funds, the parties have agreed that CHCBH will invoice the City Finance Office for covered work once it has been completed. The City will review the payment invoice and then reimburse CHCBH for those expenditures up to the amount identified in Paragraph 1 of this Agreement. CHCBH 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 CHCBH'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 CHCBH and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to CHCBH.

3. Due to the use of public funds in the construction of this project, CHCBH 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 CHCBH may engage a construction manager, a construction manager at risk, or engage in a design-build process consistent with state law. CHCBH 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. CHCBH agrees to commence construction of the project contemplated by this Agreement by July 1<sup>st</sup> 2018. If CHCBH is not going to be able to commence construction by this date, it acknowledges 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 CHCBH 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, CHCBH shall be in material breach of this Agreement. If CHCBH is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to CHCBH of such breach and CHCBH shall have thirty (30) days to remedy or cure such breach. To the extent that CHCBH has incurred reimbursable expenses under this Agreement prior to termination by the City, the City will reimburse CHCBH pursuant to the terms of this Agreement.

6. CHCBH acknowledges that the City's commitment to provide \$523,406 towards the completion of this project is good and sufficient consideration for the promises it has made herein. CHCBH further acknowledges that absent the promises made herein, the City would not

have agreed to provide these funds. The City acknowledges that CHCBH's commitment to construct a facility that will improve the availability of mental health services for low income individuals who reside in the City constitutes sufficient good and valuable consideration for the promises it has made 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

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Steve Allender, Mayor

ATTEST:

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Pauline Sumption, Finance Officer

COMMUNITY HEALTH CENTER OF THE  
BLACK HILLS, INC.

\_\_\_\_\_  
Lois Ames, Board President

\_\_\_\_\_  
Tim Trithart, Chief Executive Officer

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2017 before me, the undersigned officer personally appeared Lois Ames, who acknowledged herself to be President of the Board of Directors for CHCBH, 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 Tim Trithart, who acknowledged himself to be the Chief Executive Officer of CHCBH, 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)