

MEMORANDUM OF AGREEMENT BETWEEN

THE CITY OF RAPID CITY

and

RAPID CITY INDEPENDENT SCHOOL DISTRICT 51-4

This agreement is by and between the City of Rapid City, South Dakota, a municipal corporation (hereinafter referred to as City), and Rapid City Independent School District 51-4, (hereinafter referred to as School District), a non-profit corporation in Rapid City, South Dakota. See *Exhibit A*.

PREAMBLE

The subject of this agreement is a portion of city parkland adjacent to the west parking lot at Central High School. The City Parks and Recreation Advisory Board has approved the use of the described area as a School Garden to be constructed and maintained by students at Central High School.

AGREEMENT

The City and School District agree to allow the School District to develop a School Garden located on parkland south of the existing western parking lot at Central High School, legally described as

TRACT 19 LESS LOT H1 (ALSO IN 2N-7E SEC 3) RAPID CITY
GREENWAY TRACT, SECTION 36-T2N-7E, BLACK HILLS MERIDIAN,
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

The School Garden will be approximately 35 foot by 50 foot for the garden area plus space necessary to install a ramp from the parking lot to the garden space to ensure accessibility for all students.

Both the City and School District agree to the following regarding the approved School Garden plan:

1. School Garden Elements. School District shall construct all components of the School Garden according to City design and construction standards.
2. Construction. School District agrees to provide the money, materials, and resources for construction of School Garden and related elements. School District will seek and obtain all necessary permits for activities associated with the garden improvements. Both parties will agree upon any substantial additions or modifications to the Garden or to the plan submitted by School District and approved by the City. All costs expected

and unexpected will be paid by School District unless other arrangements are made with the City.

3. School Districts' Maintenance Responsibilities. School District will be responsible for irrigating and seeding of all areas disturbed during park improvements from initial construction of the Garden or any subsequent disruptions related to the Garden.

The parties agree to cooperate to address emergency situations resulting from vandalism or acts of nature that may require immediate attention and intervention.

4. Specifications for Improvements. All improvements will be in accordance with any and all City, State, and Federal rules and regulations. Construction of improvements shall follow the City of Rapid City Standard Specifications for Public Works Construction (2007 Edition), as currently revised. School District will be responsible for seeking and obtaining any and all permits required for the improvements.

5. Ownership. All improvements which are constructed as part of this Agreement will be owned by the City of Rapid City. The City will have full authority over the type of use allowed in the Garden.

6. Insurance. School District will ensure that they obtain liability insurance for the Project construction as required within the Standard Specifications adopted by the City. Any and all liability insurance policies obtained by School District shall name the City as an additional insured, and any entity securing liability insurance shall furnish to City evidence of the same by a certificate of insurance. School District shall name the City an additional insured for the life of this agreement.

7. Indemnification. School District agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct by School District, its designees, and/or its contractors.

8. Notice to Terminate. If, at any time, the City deems the School Garden a blight and/or not up to City standards for a park area, or if it deems School District to be in default under this agreement, the City will provide School District with notice of the defect/default and give School District ninety (90) days to comply with the terms of this agreement or correct the defect. If the defect/default is not corrected within 90 days, the City may terminate this agreement, dismantle, take out, or shut down the School Garden, and/or exercise any rights it has under the law.

9. Independent Contractor. Nothing contained herein shall be construed as creating a partnership or joint venture between City and School District, nor construed as making School District anything other than an independent contractor of City. School District shall have no right or power to act for City other than as contemplated in this agreement or otherwise expressly authorized by City.

10. Costs and Expenses. Each party shall pay all of its own costs and expenses incurred in connection with performance of its duties hereunder.

11. Waivers. No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

12. Consideration. The parties agree that the City's act of allowing School District to construct the School Garden on city parkland constitutes sufficient good and valuable consideration for School District' promises made within this Agreement and for the execution and performance of this Agreement.

13. Miscellaneous Provisions.

a. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard for its conflict of laws provisions. The parties agree to bring any suit at law or equity only in Seventh Judicial Circuit Court in Pennington County, South Dakota.

b. TITLES AND CAPTIONS. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

c. ENTIRE AGREEMENT. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

d. AGREEMENT BINDING. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

e. SEVERABILITY. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held

invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE: In witness where, the parties hereto have executed this agreement this _____ day of _____, 2015.

RAPID CITY INDEPENDENT SCHOOL DISTRICT 51-4

Assistant Superintendent – Dave Janak

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2015, before me the undersigned officer, personally appeared _____, who acknowledged _____ to be the _____ of Rapid City Independent School District 51-4, and as such _____, being authorized to do so, executed the foregoing document on behalf of Rapid City Independent School District 51-4.

IN WITNESS WHEREOF, my signature and official seal appear below.

(seal)

Notary Public, State of South Dakota
My Commission Expires: _____

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the _____ day of _____, 2015, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, 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 Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)