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## MEMORANDUM

TO: Jerry Wright, Council President

FROM: Joel P. Landeen, City Attorney

DATE: 3/28/14

RE: Update on President's Plaza Project

Alderman Wright, you have requested that I provide an update on this project. Specifically, you have requested that I outline what the parties respective obligations are and what is left to do prior to construction of the project. I have broken this memo in to three parts: the parties' obligations under the agreements; a summary of the agreements; and a summary of what needs to be accomplished before construction commences.

### **I. Obligations of the Parties.**

#### **A. Obligations of President's Plaza.**

- Design and construct a mixed use development including a parking structure with a minimum of 89,000 square feet of floor area in addition to the parking structure. President's Plaza may not reduce this square footage by more than 25% without approval of the City Council. The parking structure is required to contain a minimum of 350 spaces which are required to be transferred to the City as condominium or through a similar legal arrangement. The agreements allow President's Plaza to delay transfer of title to the parking for seven years in order to meet the requirements for new market tax credits. If the transfer of title to the parking is delayed, the City has the right to lease the parking for \$1 a year until the transfer of title occurs.
- President's Plaza has until December of 2014 to obtain new market tax credits. By January 31<sup>st</sup> 2015 President's Plaza must decide whether to move forward with the financing available or abandon the project.

- If President's Plaza chooses to proceed, they have until December 31<sup>st</sup> 2015 to complete any redesign or engineering work and any historic or other reviews and have entered into a contract for construction of the project. Once the contract for construction has been entered into, President's Plaza has six months to commence construction and twenty four months to complete construction of the project. If President's Plaza fails to meet these deadlines or suspends construction for more than 6 months, the City may terminate its obligations under all of its agreements with President's Plaza.
- President's Plaza is required to construct the project in compliance with all laws ordinances and regulations including any historic preservation requirements. President's Plaza is also required to construct the public parking in compliance with state bid laws and provides proof of its compliance with this requirement before getting reimbursed any public funds.
- President's Plaza is required to return the land to the City in the event that the project is not completed, or the agreements are otherwise terminated.
- President's Plaza's obligations are conditional and the agreements with the City may be terminated under the following circumstances:
  1. Failure to obtain \$15,000,000 in new market tax credits;
  2. Failure to obtain private financing on terms and conditions acceptable to President's Plaza;
  3. President's Plaza determines that the project is not economically feasible (President's Plaza may not exercise this option after a building permit for the project has been issued).

B. Obligations of the City.

- Transfer title to President's Plaza of the City owned parking lot at the corner of 5<sup>th</sup> and St. Joseph in exchange for a condominium consisting of 350 parking spots in a garage to be constructed on the land being transferred (transfer authorized pursuant to SDCL 6-5-4).
- Provide \$2,800,000 from the City's Vision Fund towards the design and construction of the public parking. The money is to be placed in an escrow account.
- Lease back 70 of the City owned spots to President's Plaza for use by tenants of the project.
- Reimburse President's Plaza for the improvements contained in Tax Increment District #73 per the terms of the Contract for Private Development. The improvements included in the TID and the maximum reimbursement are as follows:

Capital Costs:

Public Parking Structure	\$ 9,242,500.00
Soil Removal	\$ 247,500.00
Alley Power Line Relocation	\$ 300,000.00
Professional Services Cost	\$ 924,250.00
Financing Costs:	
Financing interest	\$ 11,408,711.14
Contingency Costs:	\$ 462,125.00
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Necessary and Convenient Costs:	\$ 500,000.00
TOTAL	\$ 23,085,086.14

- The City is required to execute a subordination agreement on the property if it is used as collateral to finance the project. This would essentially negate the City's ability to reacquire the property in the event of a default by President's Plaza.

## II. Summary of the Agreements.

*Master Development Agreement* (Sept. 21, 2009) – Original agreement that established the parties original understanding. This agreement was between the City and St. Joe Investments. It was assigned to President's Plaza on April 18, 2011. The agreement contained the requirements for transferring the land in exchange for the future interest in 350 parking spaces. The agreement also limited the TID reimbursement to \$5,000,000 (This was undone by subsequent agreements after President's Plaza took over the project from St. Joe Investments).

*First Addendum* (Nov. 16, 2009) – Dealt more specifically with the transfer of the \$2.8 million dollars in Vision Funds and required that the funds be placed in an escrow account to help fund the project.

*Second Addendum* (Nov. 7, 2011) – This agreement removed the restrictions on the TID which were imposed in the Master Agreement, established the 89,000 sq.ft. minimum floor area, required the City to lease back 70 of the spots to President's Plaza and pushed the dates for transfer of the land and payment of the Vision Funds to March 25, 2012. It also changed the references to state bid law to reflect the newly adopted statutes.

*Third Addendum* (June 4, 2012) – Changed the dates for the transfer of the property and the placement of the Vision Funds into an escrow account to August 6, 2012.

*Contract for Private Development TID #73* (June 4, 2012) – Document which commits the TID funds collected in TID #73 to President's Plaza. Had a requirement that the public improvements be under contract by May 20, 2017, which was later modified by the Fourth Addendum.

*Fourth Addendum* (Dec. 16, 2013) – established the deadlines identified above for commencement and completion of the project.

### **III. What Still Needs to Be Done.**

The following actions will need to be taken prior to President's Plaza commencing construction:

- The parties will need to draft and enter into a condominium/maintenance agreement for the parking ramp establishing who is responsible for the maintenance, repairs, etc. for the parking ramp and the common areas. This agreement will be heavily influenced by how many parking spots are ultimately constructed.
- The land will need to be transferred.
- President's Plaza will need to obtain suitable financing.
- The parties will need to draft and enter into an escrow agreement which outlines how the \$2.8 million in Vision Funds will be accessed to fund construction of the parking ramp. Once the agreement is approved, the money will need to be deposited in an escrow account.