

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY
AND PRESIDENT'S PLAZA L.L.C. REGARDING THE PAYMENT OF DESIGN AND
ENGINEERING FEES FOR THE PUBLIC PARKING RAMP BEING BUILT IN
CONJUNCTION WITH THE MIXED USE PROJECT BEING CONSTRUCTED ON
THE CORNER OF 5TH AND ST. JOSEPH STREET**

This Memorandum of Understanding (MOU) is made and entered into this ____ day of _____, 2014, 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 and President's Plaza L.L.C. (the "Developer"), a South Dakota limited liability company, located at 528 Kansas City Street, Rapid City, South Dakota.

RECITALS

WHEREAS, the City and Developer have previously approved a Master Development Agreement with amendments thereto establishing their mutual obligations and responsibilities in relation to construction of a mixed use structure and public parking ramp, commonly known as President's Plaza (the "Project"); and

WHEREAS, through these agreements the City has committed to expending \$2.8 million dollars in money from the Vision Fund for construction of the public parking ramp; and

WHEREAS, the Master Development Agreement specifically states these fund are to be used for the "design and construction of the public improvements" for the Project; and

WHEREAS, the City has previously entered into an escrow agreement and deposited the monies from the Vision Fund with an escrow agent to facilitate payment of agreed upon expenses; and

WHEREAS, the Developer has already expended significant funds on design and engineering for the Project, including funds that were expended on design and engineering work for the public parking ramp; and

WHEREAS, the Developer has sought reimbursement for the funds expended on design and engineering for the public parking ramp per the terms of the previous agreements; and

WHEREAS, the parties intent through this MOU is to facilitate payment of the amounts currently submitted, provide an amount not to exceed for design and engineering work on the public parking ramp, and to clarify the billing process for design work moving forward.

NOW THEREFORE, the parties hereby agree as follows:

1. The Developer has already incurred \$729,432.35 in fees for the design and engineering of the public parking component of the Project. Of this amount, the City has already reimbursed the Developer \$600,000 out of the Vision Fund monies being held in escrow for that purpose. The City will reimburse the Developer for the balance of this amount upon execution of this MOU.

2. The Developer and its consultants agree that the time expended and the amounts charged for any other work or fees on the public parking garage from this point forward will be itemized and accounted for separately from any work done on the balance of the project. The City and Developer recognize that due to the nature of the project some fees will be for design elements or other areas which are attributable to both the public parking structure and the privately owned structure. Any fees for such elements will be divided equitably. When a consultant is itemizing the fee between the parties they shall identify the percentage, or other means, they used to determine the fee for each party and disclose this information in the documentation accompanying the billing.

3. In exchange for the payments in Paragraph 1 of this agreement, the Developer agrees to limit the total amount of design and/or engineering fees that the City is responsible for to an amount not to exceed \$1.1 million dollars. If the design and/or engineering fees for the public parking structure exceed this amount the Developer agrees to be responsible for any additional costs, subject to any amounts that may be eligible for reimbursement for this purpose from Tax Increment District #73.

4. The City will reimburse the Developer for amounts actually expended for design and/or engineering of the public parking structure up to the maximum amount agreed to in Paragraph 3 of this MOU.

5. This MOU, the Master Development Agreement, all previous addendums thereto, the Escrow Agreement and the Contract for Private Development for TID #73 are the entire agreement of the parties. Except as modified herein, all other terms and conditions of these previous agreements remain in full force and affect.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, Finance Officer

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PRESIDENT'S PLAZA, L.L.C

Hani Shafi, Member

Pat Hall, Member

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2014, before me, the undersigned officer personally appeared _____, who acknowledged himself to be a member of President's Plaza, L.L.C., 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 _____, 2014, before me, the undersigned officer personally appeared _____, who acknowledged himself to be a member of President's Plaza, L.L.C., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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