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Misc Post
Agree

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE ALLIANCE OF TRIBAL TOURISM ADVOCATES FOR THE COMPLETION OF THE POWWOW GROUNDS AND NATIVE ARTS MARKET FUNDED IN PART THROUGH THE RAPID CITY VISION FUND.

This Agreement is made and entered into this 16th day of December, 2013, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City" and the Alliance of Tribal Tourism Advocates, a non-profit corporation chartered under the Rosebud Sioux Tribe, whose primary office is located at 919 Main Street, Suite 207, Rapid City, South Dakota 57701, herein after referred to as "ATTA."

Recitals

WHEREAS, the mission of ATTA is to enhance and promote tourism as a means of economic development and growth, while maintaining respect for Tribal traditions and lands; and

WHEREAS, ATTA requested funding from the Rapid City Economic Development and Civic Improvements Fund (the "Vision Fund") to help construct a performance area and native market known as the He Sapa Cultural Performance Center (the "Project") on City owned land north of the Journey Museum; and

WHEREAS, the City agreed to contribute \$810,000 in Vision Funds from the 2005 round of funding to construct the first phase of the Project which includes funding for site reclamation and demolition, installation of underground utilities, perimeter control, site grading, plantings and construction of the north amphitheatre and stage; and

WHEREAS, the City has previously entered into a lease with ATTA for the project site; and

WHEREAS, approximately \$150,000 in Vision Funds have already been expended on a professional services agreement for design work related to the Project; and

WHEREAS, ATTA has been focusing its efforts on fundraising and forging partnerships with other non-profit organizations to obtain the remaining funds which will be needed to complete the Project; and

WHEREAS, the City adopted an amendment to the ordinance governing the Vision Fund in 2012 which requires any project that was part of the five year plan approved in 2005 be under construction by December 31, 2013, or in the alternative the owners of the project enter into an agreement with the City by the same date which establishes specific completion dates or benchmarks for the Project to ensure the Project is completed in a timely fashion; and

WHEREAS, the purpose of this Agreement is to fulfil the requirements of Section 3.16.020(H) of the Rapid City Municipal Code (RCMC) and establish benchmarks and completion dates for the Project.

NOW THEREFORE, the parties hereby agree as follows:

1. The City agrees to provide ATTA with \$810,000 in Vision Funds to construct Phase IA of the Project, less any amounts the City has already expended out of these funds to pay for design services pursuant to a previous agreement between the parties and Wyss Assoc. No further Vision Funds may be expended on design services without the express approval of the City Council.
2. ATTA agrees to construct Phase IA of the project as shown on the materials they have submitted to the City. ATTA will provide the City with a construction cost estimate prepared by a qualified design expert for Phase IA of the Project no later than December 12, 2014 and no earlier than November 10, 2014. The cost estimate must have been prepared within two (2) months of the date it was provided. ATTA agrees to construct any Phase of the Project on which Vision Funds, or any other public funds, constitute a portion of the funding for the Project in compliance with state laws on public bidding. ATTA will provide the City Finance Office with documentation proving that state bid laws were complied with. If ATTA fails to comply with state bidding law in awarding a contract for the Project, no Vision Funds or other public funding will be used to construct the Project.
3. ATTA will have until December 31, 2014, to obtain the remaining funds necessary to construct the Project plus a contingency of 10% based on the cost estimate identified in Paragraph 2 of this Agreement. These funds may consist of donations which have been received by ATTA for the purpose of constructing the project, through monies committed by other organizations which have partnered with ATTA on the Project, or any combination thereof. Sufficient funds to construct the Project must be in ATTA's actual possession by this date to satisfy this requirement. Future pledges, or commitments for payment, will not be sufficient, unless ATTA is able to demonstrate, to the satisfaction of the City, that the pledged funds are actually available for use and will be received in time to fund construction of the Project. The remaining Vision Funds and the monies collected by ATTA will be placed in an escrow account which will require approval of both an ATTA representative and the City's Finance Officer, or her designee, prior to a release of any funds. The funds in the escrow account may only be used to fund construction of the Project and may not be expended for other purposes.
4. ATTA will be responsible for bidding out and managing construction of the Project. ATTA will not bid out or enter into a contract for construction of the Project until all requirements of Paragraph 3 of this Agreement are met. The contractor constructing the Project will be paid out of the escrow account established by Paragraph 3 of this Agreement. ATTA or the contractor will submit an invoice to the City Finance Office with sufficient documentation to show the amounts due and owing for work which has been completed and for which payment is sought. The money in the escrow account can only be used to pay for work which has been completed and accepted and cannot be used to pay for work which has not been completed or accepted. All requests for payment will also be reviewed by the City Public Works Dept. If a

problem with the payment is identified, the City may withhold approval of a payment until any issues 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 will not unreasonably withhold payment.

5. ATTA will have until July 31, 2015, to complete any remaining design work, bid the Project and enter into a contract for construction of Phase IA of the Project. If the amount of the bids received exceeds the amount of funds available in the escrow account, no contract for construction of the project may be entered into until funds in an amount sufficient to complete the project are secured and placed into the escrow account. If additional funds cannot be secured, the parties may jointly approve revising and re-bidding the Project to reduce the cost. If the parties are unable, or unwilling, to revise the Project, or if they are unable to secure sufficient funds to complete the project as bid, the project will be abandoned and this Agreement will be terminated pursuant to Paragraph 8.

6. Once a contract for construction has been entered into, ATTA will have six (6) months to begin actual construction of the Project. Once construction is started, ATTA will have eighteen (18) months to complete Phase IA of the Project.

7. The parties acknowledge that the City currently has the right to unilaterally terminate the lease with ATTA for the site on which the Project is to be constructed. The City agrees not to unilaterally terminate the lease except under the termination provisions contained in Paragraph 8 of this Agreement.

8. If ATTA fails to meet any of the deadlines established in this Agreement, or if ATTA suspends construction on the Project for more than four (4) months, the City may upon terminate its obligations under this Agreement as well as terminate the lease the parties have previously entered into. If any suspension or delay is the result of causes beyond ATTA's control such as a natural disaster, lack of material supplies, labor strikes, war or other similar causes, the City may grant a reasonable extension to the deadlines established herein.

9. Upon termination of this Agreement, the City shall take ownership of any improvements which have already been constructed on the site and may complete the Project, abandon the Project, or take any other action that the City deems appropriate. Upon termination of the Agreement, the City will not be responsible to pay for, or otherwise reimburse, ATTA any additional monies or for the value of any improvements which have already been constructed.

10. ATTA acknowledges that the City's commitment to provide \$810,000 towards the completion of this Project is good and sufficient consideration for the promises it has made herein. ATTA further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds.

11. If any provision or term of this Agreement is held to be unconstitutional, invalid, or unenforceable by any court or tribunal having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and such 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.

12. 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.

13. The terms and conditions of the Agreement may be modified only in writing that is duly executed by the parties. 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.

14. 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.

15. 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.

16. This document along with the lease agreement the parties previously entered into constitute the entire agreement of the parties. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or intentionally omitted.

Dated this 16 day of December, 2013.

CITY OF RAPID CITY



Sam Kooiker, Mayor

ATTEST:



Pauline Sumption, Finance Officer

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