

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE DOWNTOWN
BUSINESS IMPROVEMENT DISTRICT BOARD FOR PAYMENT OF
ADMINISTRATIVE EXPENSES**

This Agreement is entered into effective the ____ day of _____, 2011, by and between the **City of Rapid City** (hereinafter "City"), a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701, and the **Downtown Business Improvement District Board** (hereinafter referred to as "Board"), of 300 Sixth Street, Rapid City, South Dakota 57701.

WHEREAS, the Downtown Business Improvement District ("Downtown BID") was created by the City for the purpose of constructing, operating and managing Main Street Square, along with other projects to foster economic development in the business area; and

WHEREAS, the Downtown BID is funded by special assessments levied against the properties in the business area; and

WHEREAS, the City assesses properties and collects payments of special assessments on behalf of the Downtown BID; and

WHEREAS, the City incurs expenses related to the special assessments; and

WHEREAS, the Board desires to compensate the City for the expenses; and

WHEREAS, the parties mutually desire to reduce their understandings and agreements to writing by executing this Agreement.

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference as if more fully set forth hereinafter.

2. Payment of Administrative Fee. Board agrees to pay City administrative fee which shall be composed of a flat fee in the amount of One Percent (1%) of the total of all special assessments levied by the City to fund the Downtown BID and all interest and penalties collected or earned by the City.

3. Retention of Fee by City. The parties agree that the fee provided in Paragraph 2 above shall be retained by the City Finance Office from any payments due the Board or its assignee.

4. Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date. This Agreement shall be automatically renewed for fourteen (14) successive two- (2-) year terms thereafter unless City gives written notice to Board of its election not to renew prior to the expiration of the initial term or the then current renewal term.

5. Adjustment of Fee. Upon any renewal of this Agreement, City may adjust the flat fee paid pursuant to Section 2(a) hereunder to a percentage or amount reasonably believed to cover actual expenses incurred by the administration, levying, collection and handling of special assessments to fund the Downtown BID. Any adjustment shall require sixty days' notice to Board.

6. 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. **PRONOUNS AND PLURALS.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

d. **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.

e. **AMENDMENTS.** Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

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

g. **CONSTRUCTION.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

h. **NOTICES.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given, when received, if delivered by hand or by facsimile transmission, and when deposited, if placed in the mails for delivery by air mail, postage prepaid, addressed to the appropriate party as specified on the first page of this Agreement. Addresses may be changed by written notice given pursuant to this Section, however any such notice shall not be effective, if mailed, until three (3) working days after depositing in the mails or when actually received, whichever occurs first.

i. FURTHER ACTION. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Agreement.

j. COUNTERPARTS/EFFECTIVE DATE. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Furthermore, regardless of the actual day of execution, this Agreement shall be effective as of the date set forth herein.

k. 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.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in the manner appropriate to each, to be effective as set forth herein.

DOWNTOWN BUSINESS IMPROVEMENT BOARD

By _____
Terry Nelson, Its Chairman

Attest _____
Clancy Kingsbury, Secretary

State of South Dakota)
) ss.
County of Pennington)

On this the ____ day of _____, 2011 before me, the undersigned officer, personally appeared Terry Nelson and Clancy Kingsbury, who acknowledged themselves to be the President and Secretary of the Board of the Downtown Business Improvement Board, and that they, as such President and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Board by themselves as President and Secretary.

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

(seal)

Notary Public - 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 _____, 2011 before me, the undersigned officer, personally appeared Alan Hanks 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.

(seal)

Notary Public - South Dakota
My Commission Expires _____