

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY AND FMLC, INC. CONCERNING THE RIGHT-OF-WAY FOR MALL DRIVE BETWEEN MARCH AVENUE AND EAST NORTH STREET.**

WHEREAS, FMLC, Inc. owns parcels of land which are generally located, north of Interstate 90 between March Avenue and East North Street within the City of Rapid City; and

WHEREAS, FMLC, Inc., filed plats of the above property in approximately 1977; and

WHEREAS, at the time the plats were filed the property was located outside the City limits and was under the jurisdiction of Pennington County; and

WHEREAS, the plats filed by FMLC, Inc., show proposed H Lots for Mall Drive that FMLC, Inc., offered to transfer to Pennington County; and

WHEREAS, FMLC, Inc., conditioned its proposed grant of the H Lots on Pennington County agreeing to construct Mall Drive within a reasonable period of time; and

WHEREAS, the County has never undertaken the construction of Mall Drive; and

WHEREAS, the land including the proposed H Lots are now located inside the City limits of Rapid City; and

WHEREAS, the H Lots located in the Northwest Quarter of Section 29 and the East Half of Section 30, all located in Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota were never accepted by Pennington County based on the county's failure to construct Mall Drive within a reasonable period of time as required in the conditional grant of the proposed H Lots; and

WHEREAS, FMLC, Inc. and the City in coordination with the South Dakota Department of Transportation and FMLC, Inc. have constructed Mall Drive in the H Lots lying in the Southwest Quarter of Section 29, Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota ; and

WHEREAS, FMLC, Inc. has requested that Mall Drive have a different alignment than the alignment that is shown on the plats lying in the Northwest Quarter of Section 29 and the East Half of Section 30, all located in Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota filed in 1977 that contain the proposed H Lots that FMLC, Inc. conditionally granted to Pennington County; and

WHEREAS, the parties wish to memorialize their discussions and understanding on this issue so that it is clear what actions are expected by the parties to facilitate the construction of Mall Drive.

NOW THEREFORE, the parties agree as follows:

1. The H Lots shown on the plats of the above properties filed in 1977 did not operate to transfer any interest in the proposed H Lots located in the Northwest Quarter of Section 29 and the East Half of Section 30, all located in Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota to the County based on the county's failure to construct Mall Drive per the conditional grant. FMLC will submit a proposed resolution to both the County Commission and the City Council which will acknowledge that the road was not constructed in the H Lots previously described in this section in a reasonable time and therefore was never accepted by the County or City.

2. FMLC, Inc. agrees to submit new H Lots for the City to accept and file which will encompass the realigned portion of Mall Drive located in the Northwest Quarter of Section 29 and the East Half of Section 30, all located in Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota which may be impacted by the fact that the previous H Lots were not legally accepted by the County.

3. FMLC Inc. agrees to execute and record a deed and the City agrees to accept such deed transferring the ownership of the new H Lots to the City.

4. FMLC Inc. agrees to execute and record a deed and the City agrees to accept such deed transferring the ownership of the existing H Lots located in the Southwest Quarter of Section 29, Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota.

5. It is understood by the parties that FMLC will come back at a latter date and request that a portion of the H Lot(s) for Mall Drive located in Southwest Quarter of Section 29, Township 2 North, Range 8 East, BHM, Rapid City, Pennington County, South Dakota be partially vacated so that the width of the right of way is reduced from 150 feet to 115 feet. FMLC understands that the partial vacation of the right of way to reduce its width will require that a permanent utility easement be granted to any utilities located outside the reduced right of way and that any private utilities that are currently located in the right of way consent to being located in a permanent easement rather than the right of way.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

FMLC, INC.

\_\_\_\_\_

By:\_\_\_\_\_

Its:\_\_\_\_\_

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be the \_\_\_\_\_ of FMLC, Inc., and 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, South Dakota

My Commission Expires:  
(SEAL)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

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Notary Public, South Dakota

My Commission Expires:  
(SEAL)