

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY
AND THE DOWNTOWN RAPID CITY ECONOMIC DEVELOPMENT
CORPORATION REGARDING THE DESIGN PHASE OF MAIN STREET SQUARE**

This Agreement (“Agreement”) is made and entered into this ____ day of March, 2010, by and between the City of Rapid City, a South Dakota municipal corporation (“City”) and the Downtown Rapid City Economic Development Corporation (“DRC”), a South Dakota non-profit corporation and is subject to the following terms and conditions.

W I T N E S S E T H:

WHEREAS, the purpose of this Agreement is to allow DRC access to certain real property owned by the City, legally described as follows:

Lots 17, 18, 19, 20, and Lots 21-23 in Block 75 of the Original Townsite of the City of Rapid City, Pennington County, South Dakota.

located at the corner of Sixth Street and Main Street (“City Property”); and

WHEREAS, access to the City Property is being provided to allow DRC to develop a preliminary design of a proposed public/private project (“Project”); and

WHEREAS, the Project is to create a Main Street Square plaza that would include green space, a performance stage, a fountain, and landscaping features, among other amenities, on the City Property; and

WHEREAS, DRC intends to seek partial funding for the Project through the City’s 2012 program; and

WHEREAS, the preliminary design would be useful in the City’s evaluation of the Project and consideration for funding; and

WHEREAS, City and DRC knowingly and voluntarily acknowledge the mutual covenants expressed herein shall constitute sufficient consideration for the performance of this Agreement by the respective parties.

NOW, THEREFORE, the parties hereby agree as follows:

1. Authorization for DRC to access City Property. City hereby authorizes DRC and its officers, employees, and contractors to access City Property for the purposes of undertaking preliminary design services related to the Project.
2. Condition of City Property. City makes no warranties as to the condition of the City Property or its fitness for the purpose contemplated herein.

3. Damage to City Property. DRC agrees to repair any damage to the City Property that may result from access and use of the property by DRC, its officers, directors, employees and independent contractors. Any damage shall be repaired so that the property is returned to its original state, and any such repair shall be made according to the most recent edition of the City's Standard Specifications for Public Works Construction.
4. Obligations of DRC. DRC shall contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. DRC shall require such design services be performed consistent with sound and generally accepted practices. DRC shall require its contractors to exercise due care in accessing the City Property. DRC shall require any of its contractors that enter upon the City Property to name the City as an additional insured.
5. No Obligation of City for design funding. The City shall have no obligation to appropriate any funds to pay for any design services.
6. No Obligation of City for Project funding. The City shall have no obligation to fund the Project or any portion thereof. The City shall have no obligation to enter into any additional, supplemental or further agreement regarding the Project or its possible construction, nor shall the City be bound to approve any design produced by DRC, in whole or in part.
7. Design Products. If the City decides to fund the project, DRC shall turn over the original or a true and correct copy of all documents, electronic files and any other products generated as a result of DRC's grant of access to the City Property.
8. Termination of Agreement. The parties may terminate this agreement as follows:
 - A. By either party upon thirty days written notice to the other;
 - B. Failure of either party to meet any of its obligations under this Agreement;
 - C. DRC filing for bankruptcy or being placed under a receivership; or
 - D. Dissolution of DRC.
9. Default Remedies.
 - A. In the event either party defaults under this Agreement, the other party shall have all rights and remedies available at law and in equity.
 - B. Each party shall bear their own costs, including attorney fees, in defending or bringing any action under this Agreement.
10. Notice. Any notice or communication under this Agreement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Agreement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

If to City:
City of Rapid City
300 6th St
Rapid City, SD 57701
Attn: Mayor

If to DRC:
Destination Rapid City
606 Main Street
Rapid City, SD 57701
Attn: President

11. Assignment. This Agreement and the rights and obligations hereunder shall not be assigned or transferred by any party without express written consent of the other.
12. Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
13. Integration. This Agreement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written.
14. Amendments. This Agreement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Agreement.
15. Severability. If any one or more of the provisions of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Agreement shall not be in any way impaired.
16. No Waiver. 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.
17. Governing Law and Venue. This Agreement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this Agreement.
18. Headings. The section headings within this Agreement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Agreement.
19. Counterparts. This Agreement may be executed in separate counterparts with separate signature pages and each counterpart with attached executed signatures shall constitute an executed original of this Agreement.

20. Relationship of Parties. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and DRC nor between City and any officer, employee, contractor or representative of DRC.

21. Construction. 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.

22. Time of the Essence. The parties agree time is of the essence in performing the obligations set forth in this Agreement.

Dated this ____ day of _____, 2010.

DOWNTOWN RAPID CITY ECONOMIC DEVELOPMENT CORPORATION

By _____
Its _____

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

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

On this ____ day of _____, 2010, 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 Downtown Rapid City Economic Development Corporation, and as such, executed the foregoing instrument for the purposes herein contained.

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

(seal)

Notary Public, South Dakota
My Commission Expires: _____

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

On this ___ day of _____, 2010, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that they, as such Mayor and Finance Officer, being duly authorized to do so, 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.

Notary Public, South Dakota
My Commission Expires: _____

(SEAL)