

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY AND CHAPTER 3 OF THE  
DISABLED AMERICAN VETERANS TO PAY FOR THE INSTALLATION OF A FLAG POLE AND MEMORIAL  
WITH FUNDS FROM THE CITY'S VISION ACCOUNT.

This Memorandum of Understanding ("MOU") is entered into on this \_\_\_ day of April, 2017, 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 57701, and Chapter 3 of the Disabled American Veterans (the "DAV"), a 501(C)(3) exempt organization, located at 101 E. Madison Street, Rapid City, South Dakota 57701.

RECITALS

WHEREAS, the City has created an account known as the Vision Account with which to fund special projects which benefit and promote the City; and

WHEREAS, on July 5, 2016, the City Council authorized initiating the process to create a one year plan for expenditure of half of the City's annual Vision Account revenues in 2017; and

WHEREAS, the City solicited prospective projects to be funded from the Vision Account from community organizations; and

WHEREAS, the City formed a committee that reviewed and made recommendations regarding funding requests for the projects that were submitted by community organizations; and

WHEREAS, one of the projects recommended for funding by the committee was a request from the DAV to fund a new flagpole and memorial for veterans (the "Project") at the DAV property in Rapid City; and

WHEREAS, the City Council reviewed the funding recommendations of the committee and approved authorizing staff to work with the community organizations to implement the projects identified in the committee's recommendations.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. The City will expend up to \$21,000 to design and install a flagpole and memorial consistent with the application submitted by the DAV in its' request for allocation of Vision Funds to the Project. A copy of the DAV's application is hereby incorporated into this MOU. These funds are intended to cover the purchase and installation of a flagpole, a fee to Thunderbolt Gallery to design and coordinate installation of the memorial, a fee to West River Monument to cover the cost of materials and workmanship in creating the memorial and benches identified in the company's quote, and the costs of electrical and concrete work also identified in quotes attached to the DAV's application. The amount identified in this paragraph is the maximum amount the City will expend on this project. If the expenses in completing this project come in higher than this amount the DAV will either need to make changes to the project that bring the cost under this amount or make up the difference in cost out of other sources for the funds.

2. In order to simplify this process, the contractors working on this project will invoice the City for the work when completed. City staff will review the invoices to insure that the work being performed is consistent with the design and scope of work identified in the DAV's application, for general conformity to the quotes and costs provided, and that there are sufficient funds budgeted for this project still available. While the City acknowledges that there be minor changes in cost or design as the Project is actually constructed, if the invoices submitted or the work being done is not in substantial conformity with the DAV's application the City may order a halt to the project or may withhold payment until the issues are satisfactorily resolved. The City agrees to work diligently with the DAV and the contractors on the Project to resolve any disputes and the City agrees that authorization for minor changes in design or cost based on changing conditions will not be unreasonably withheld.

3. In order to get the project moving, the City agrees to pay deposits to the Thunderbolt Gallery in the amount of \$500 and to West River Monument Company, Inc. in the amount of \$5,367 in order to get the work started. The deposits shall be refundable if no work is performed or materials received by DAV. As these contractors pay for materials for the project and/or do work pursuant to this MOU they may convert the money from the deposit into payment. The contractors shall provide the City with invoices showing the cost of materials or value of the work performed so the City can reconcile the balance remaining on the contractors deposit with the overall project cost. Once the deposit has been used, the contractors should invoice the City directly for any remaining work.

4. The parties acknowledge that the City's intent was to fund projects to be completed in 2017. Recognizing this fact, the DAV agrees to take actions to proceed with this project within thirty (30) days of approval of this MOU and to have the project completed by August 31<sup>st</sup> of 2017. In order to constitute the start of the Project the DAV will need to have authorized ordering the materials and commission the artist to finalize the design of the memorial. If the project is not started within thirty (30) days or completed by August 31<sup>st</sup>, the DAV will need to seek a time extension from the Council. If the DAV fails to comply with these timeframes or obtain an extension, the City may terminate this MOU. To the extent that any work has been started prior to termination of the MOU, the City will reimburse the contractors for such work.

5. The DAV acknowledges that the City's commitment to provide \$21,000 towards the completion of this Project is good and sufficient consideration for the promises it has made herein. The DAV further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds.

6. If any provision or term of this MOU 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.

7. The terms and conditions of the MOU 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 MOU without the prior written consent of the other party.

8. Failure of a party to insist upon adherence to any term of this MOU 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.



(SEAL)