

**MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
WESTERN RESOURCES FOR DIS-ABLED INDEPENDENCE REGARDING THE
DONATION OF THE ADA TRIBUTE MEMORIAL STATUE**

This Memorandum of Agreement is made by and between the CITY OF RAPID CITY, of 300 Sixth Street, Rapid City, South Dakota 57701 (hereinafter “City”), and the WESTERN RESOURCES FOR dis-ABLED INDEPENDENCE, 405 E. Omaha Street, Ste. D, Rapid City, South Dakota 57701 (hereinafter “Western Resources”).

W I T N E S S E T H:

WHEREAS, Western Resources, in partnership with Bruce Backens, commissioned a statue to memorialize individuals and organizations who have been involved with Americans with Disabilities Act projects or issues; and

WHEREAS, John Lopez was selected to create a life-size bronze sculpture of Scotty Backens in a wheelchair, which sculpture was named “ADA Tribute Memorial;” and

WHEREAS, the City supports goals of Western Resources to provide inspiration for persons with disabilities and raise awareness of the contributions made by disabled members of the community; and

WHEREAS, the parties desire to enter into this Memorandum of Agreement to reduce their mutual agreements to writing.

NOW, THEREFORE, it is agreed as follows:

1. Donation. Western Resources agrees to give to the City the above-referenced statue entitled “ADA Tribute Memorial,” and the City agrees to accept the donation of the statue. This gift shall pass all right, title and interest in the statue to the City, and shall be without condition.
2. Installation. Western Resources shall be responsible for the installation of the statue and construction of an appropriate base for the statue. Such installation shall be made in compliance with all applicable laws, all requirements of the Public Works and Growth Management Departments, and shall be made according to the plan submitted and approved by the City’s Planning Commission.
3. Placement. Placement of the statue shall be in Memorial Park, legally described as Tract 20 of Rapid City Greenway Tracts Less Lot H1, located in Section 36, T2N R7E BHM, Rapid City South Dakota, as more particularly shown on Exhibit “A.”
4. Maintenance. The parties hereby agree that maintenance of the statue shall be the responsibility of the City. The City shall have sole discretion as to whether or not maintenance is needed and whether maintenance or repairs shall be made.

5. Liability, Hold Harmless and Indemnity. Western Resources agrees to assume all liability for the construction of a base and the placement of the statue on public property, and hereby releases and discharges the City, its employees, agents and assigns, of and from all liability for any and all actions, claims, demands, losses or damages as a result of injury to persons or property, in any way resulting either directly or indirectly from said construction and placement on public property. Western Resources further agrees to defend, indemnify and hold harmless the City of Rapid City for any such injury or damage to persons or property arising from or related to the construction of a base and the placement of the statue on public property. Western Resources also agrees that it will not make a claim against, sue, attach the property of, prosecute or seek indemnity from the City for any injury or damage resulting from or related to the construction of a base and the placement of the statue on public property.

6. Relocation or Removal. The City reserves the right to remove or relocate the statue and accompanying base and memorials. The City shall have the sole discretion to determine whether relocation or removal is necessary or desirable.

7. Consideration. The parties hereby acknowledge and agree that the City allowing placement of the statue on public property constitutes good and sufficient consideration for the execution and performance of this Memorandum of Agreement.

8. Relationship between the Parties. This Agreement does not create an employment or agency relationship between the City and Western Resources or Western Resources's agents or employees. Nothing contained in this Memorandum of Agreement is intended to create a partnership or joint venture between Western Resources and the City. No agent of Western Resources shall be the agent of the City, and Western Resources covenants that it will not take any action in the name of, or by holding itself out as the agent of the City.

9. Time of Essence. Time is of the essence of this Agreement.

10. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

11. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

13. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

14. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

15. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

16. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

Dated this _____ day of _____, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

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

On this the _____ 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, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Memorandum of Agreement 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: _____

Dated this _____ day of _____, 2010.

WESTERN RESOURCES FOR DIS-ABLED INDEPENDENCE

By _____

Its _____

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

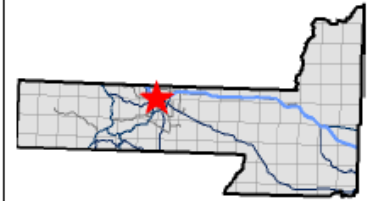
On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared _____, who acknowledged him/herself to be the _____ of WESTERN RESOURCES FOR DIS-ABLED INDEPENDENCE, and that s/he, as such _____, being authorized so to do, executed the foregoing Memorandum of Agreement for the purposes therein contained by signing the name of WESTERN RESOURCES FOR DIS-ABLED INDEPENDENCE by him/herself as such _____.

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

(seal)

Notary Public, South Dakota
My Commission Expires: _____

Exhibit A - Memorandum of Agreement



Legend

Roads

- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- Unimproved Road
- Trail
- other
- Not yet coded

Township/Section lines

- SECTION
- TOWNSHIP
- Parcel Boundary
- Lot Lines
- COUNTY
- LOT LINE
- PARCEL LINE
- ROAD ROW
- RR ROW
- SECTION
- TOWNSHIP
- WATER LINE

PLSS Sections

- County Line
- City Boundaries
- Rapid City
- Box Elder
- New Underwood
- Wasta
- Wall
- Quinn
- Hill City
- Keystone

2008 Developed Areas
 2008 Aerial Photography



Scale: 1:2,461

0 140 280 ft.

Map center: 44° 5' 1.1" N, 103° 13' 37.4" W

DISCLAIMER: This map is provided 'as is' without warranty of any representation of accuracy, timeliness, or completeness. The burden for determining accuracy, completeness, timeliness, merchantability, and fitness for or the appropriateness for use rests solely on the user. Rapid City and Pennington County make no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The user acknowledges and accepts the limitations of the map, including the fact that the data used to create the map is dynamic and is in a constant state of maintenance, correction, and update. This document does not represent a legal survey of the land. There are no restrictions on the distribution of printed Rapid City/Pennington County maps, other than the City of Rapid City copyright/credit notice must be legible on the print. The user agrees to recognize and honor in perpetuity the copyrights and other proprietary claims for the map(s) established or produced by the City of Rapid City or the vendors furnishing said items to the City of Rapid City.