

5001
12-21-98
(Real Estate
Lease)

**JOINT POWERS AGREEMENT BETWEEN THE SOUTH DAKOTA BOARD
OF REGENTS AND THE CITY OF RAPID CITY**

This AGREEMENT, made and entered into by and between the South Dakota Board of Regents (hereinafter "SDBOR") and the City of Rapid City (hereinafter "CITY"), each of which is authorized under the provisions of Chapter 1-24 of South Dakota Codified Laws to enter into a joint powers agreement, WITNESSETH:

WHEREAS the CITY owns a historic building located in Halley Park, dedicated parkland, in the City of Rapid City, (hereinafter "The Facility") and the sidewalk and associated parking area upon certain real property legally described as:

A portion of Block 1 in the Boulevard Addition of the City of
Rapid City, Pennington County, South Dakota

The portion of that property which is the subject to this Joint Powers Agreement is shown on Exhibit A attached hereto; and

WHEREAS The South Dakota School of Mines and Technology (hereinafter "SDSM&T") is a public university located in Rapid City, under the governance of the SDBOR; and

WHEREAS SDSM&T currently operates the "Museum in Motion," on its campus, with interactive displays and exhibits in the area of science and related fields, the space for which Museum has become inadequate and needed for other activities of SDSM&T; and

WHEREAS the SDBOR and SDSM&T desire to designate and title the former Museum in Motion, the "Children's Science Center," and wish to relocate the museum, f/k/a Museum in Motion (hereinafter "Children's Science Center"), to the Facility (hereinafter "Facility"); and

WHEREAS the Facility is currently unoccupied and would provide a suitable space for the Children's Science Center; and

WHEREAS the CITY desires to make appropriate use of the Facility in a manner that will benefit its citizens and others;

NOW, THEREFORE, BE IT REMEMBERED THAT THE PARTIES HERETO HAVE AGREED, that they will jointly and cooperatively provide for the occupancy and use of the Facility and associated property as shown on Exhibit A for the purposes and according to the terms and conditions set forth in this Joint Powers Agreement.

GENERAL PROVISIONS

PURPOSE

The Purpose of this Joint Powers Agreement is to set forth the terms and conditions whereby the parties hereto, in the exercise of joint powers under SDCL Chapter 1-24, shall establish on property owned by the CITY, a Children's Science Center for the display of interactive exhibits in the field of science and related fields, and otherwise utilize the Facility and associated property, as set forth on Exhibit A attached hereto, in accordance with the terms and conditions of this Agreement. The permitted use of the Facility by SDSM&T shall also include such activities as guest speakers/lecturers, workshops, receptions, children's birthday parties, gift and concessions shop, and other like activities.

TERM

The term of this Joint Powers Agreement shall be twenty-five (25) years, commencing December 31st, 1998, and ending December 31st, 2023, unless sooner terminated, extended, or renewed as hereinafter set forth.

FINANCING/BUDGET

Financing for the development, operation, and administration of the Children's Science Center shall be controlled by SDSM&T, with funding and service contributions to be made by any and/or all of the following:

- a. fund raising activities conducted by SDSM&T;
- b. Children's Science Center membership fees;
- c. Children's Science Center admission fees;
- d. educational programming activities;
- e. individual and/or corporate sponsorship;
- f. government and private grants;
- g. SDSM&T institutional funding; and
- h. other permissible means of obtaining financing.

It is specifically recognized and agreed that there is no contemplation that the CITY will provide any financial or in-kind support of this operation conducted by SDSM&T upon the Facility or elsewhere. A budget shall be established and administered by SDSM&T, with consideration given to the educational activities to which the Children's Science Center shall be dedicated.

USE OF THE FACILITY

After finalization of this Agreement, the real property and the building situated thereon shall continued to be the property of the CITY. The CITY shall provide for the rent-free use of the property herein described. The use of the facility as a Children's Science Center and for related activities, as described in the general provision on the purpose of this Agreement, shall be

administered and directed by the President of SDSM&T and appropriate SDSM&T designees. SDSM&T shall arrange for the day-to-day operation of the Facility.

TERMINATION/MODIFICATION/RENEWAL

This Joint Powers Agreement shall terminate automatically at the end of the stated Term unless earlier terminated. Early termination may take place in any of the following ways:

- a. By mutual written consent of the parties hereto.
- b. In the event of non-cured default by the non-defaulting party, if the defaulting party fails to cure such default within thirty (30) days after written notice by the non-defaulting party of its intent to terminate this Agreement.
- c. By either party hereto giving the other party a six-month advance written notice to terminate this Agreement.

Upon termination of this Agreement, full title in the Facility shall be vested in the CITY, provided, however, that any personal property placed in the Facility by SDSM&T shall not become property of the CITY unless SDSM&T fails to remove such personal property within thirty (30) days from the effective date of such termination. Any immovable fixtures and improvements, not including display cases, made to the Facility by SDSM&T shall remain with the Facility upon termination of this Agreement and become the property of the CITY.

DEFAULT

In the event that either of the parties hereto fails to abide by or maintain any material portion of the covenant made pursuant to this Agreement, and in the event that any such deficiency in maintaining such covenant shall continue for a period of thirty (30) days after written notice by the non-defaulting party of the specific nature of the deficiency, the non-defaulting party

may elect to terminate this Agreement pursuant to the Termination provision of this Agreement. In the event the defaulting party is SDSM&T, and the CITY elects to terminate this Agreement, SDSM&T shall surrender possession of the Facility to the CITY.

CONTROLLING LAW

This Agreement is subject to and shall be interpreted under the laws of the State of South Dakota. Any legal disputes arising under this Agreement shall be resolved by resort to the courts of the Seventh Judicial Circuit, Pennington County, State of South Dakota.

NON-DISCRIMINATION

The parties shall not on the grounds of race, color, national origin, military status, sex, religion, age, sexual orientation, political preference, or disability discriminate against any person or group of persons in any manner prohibited by local, state, or federal laws. Each party hereto further agrees to comply with requirements made to enforce the foregoing which may be required of or by the other party hereto.

ENTIRE AGREEMENT

This Agreement contains the entire agreement by and between the parties hereto as to the use and operation of the Facility, and incorporates herein all prior agreements and understandings, written or oral, that they or any of them may have had, relative to the use or operation of the Facility.

AMENDMENTS

This Agreement can only be amended by the specific consent of the parties hereto.

SPECIFIC PROVISIONS

SDBOR agrees as follows:

I. SDBOR authorizes SDSM&T to carry out those duties and obligations agreed to by it under this Joint Powers Agreement, and to cooperate fully with the CITY to carry out the purposes, terms, and conditions set forth herein.

II. The CITY hereby agrees as follows:

1. To make available to SDSM&T for the Term of this Agreement, the Facility and associated property, as set forth in Exhibit A, unless sooner terminated, extended, or renewed as hereinafter set forth.

2. The building and grounds which are subject of this Agreement shall be insured by the CITY under its property insurance policy. SDSM&T shall reimburse the CITY for the costs of the property insurance. SDSM&T shall carry insurance coverage for property owned by SDSM&T as they shall determine necessary.

3. The CITY as lessor and SDSM&T as lessee releases the other and waives its entire right of recovery against the other for loss or damage arising out of or incident to the perils covering all real and personal property. Each party shall obtain from its insurer(s) provisions permitting waiver of any claim against the other party for loss or damage within the scope of the above-specified insurance, if necessary.

III. SDSM&T hereby agrees as follows:

1. To occupy the Facility for the primary purpose of a Children's Science Center with displays and interactive exhibits in the area of science and other related fields, the use of which shall include, but not be limited to, activities, displays, and other related uses, provided, however, if SDSM&T desires to make use of the Facility for an unrelated purpose, it shall first obtain written consent of such unrelated use from the CITY.

2. Any use of the Facility by SDSM&T shall comply, in all respects, with all applicable laws, including municipal ordinances, sign codes, building codes, and zoning regulations.
3. SDSM&T shall not sublet all or any portion of the Facility without the prior written consent of the CITY.
4. SDSM&T shall maintain the interior of the Facility, given full recognition of its historic character and the fact that it is recognized by the public as a CITY owned asset.
 - a. SDSM&T shall be responsible for all interior repairs or replacements of all or portions of interior improvements made to the Facility, including but not limited to mechanical, electrical, plumbing, and finish elements.
 - b. SDSM&T agrees as part of its responsibility, to cleaning, caulking, painting, and all other appropriate measures to preserve the interior of the building.
 - c. SDSM&T shall make no major exterior alterations of the Facility without the prior written approval of the CITY; however, SDSM&T may with the written approval of the CITY, make necessary interior alterations so long as such alterations do not damage or weaken the structural integrity of the Facility.
 - d. SDSM&T recognizes that the Facility is not fully handicapped accessible, and agrees, at its own expense, to make such interior alterations as may be reasonably appropriate to improve handicapped accessibility. Any alterations shall be made in compliance with all applicable codes, ADA requirements, and the Secretary of Interior's guidelines for buildings listed on the National Register of Historic Places.

- e. If any of the above described repairs or alterations would constitute capital repairs, maintenance, or improvements, or have a useful life extending beyond the remaining term of this Agreement, then all costs attributable to such capital repairs or alterations shall be expended directly from federal and local funds, grants, and donations which are placed directly in the South Dakota School of Mines and Technology Foundation fund upon receipt, and which will not include any state appropriated funds.
5. All capital improvements in or upon the Facility, including all buildings, structures, fixtures, heating, ventilating and air conditioning equipment, and all pipes, ducts, conduits, wiring, paneling, partitions, railings and the like, but excluding personal property, furniture, signs and trade fixtures, shall become the property of the CITY and shall remain upon and be surrendered with the Facility at the expiration or sooner termination of this Agreement as provided herein.
6. SDSM&T shall arrange and pay for all necessary utilities at its sole expense.
7. SDSM&T participates in and will continue to participate in the Liability Coverage Program for Public Entities pursuant to the provisions of SDCL Chapter 3-22.
8. Nothing in this Agreement shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of the performance of this Agreement. Any liabilities or claims for property loss or damage or death or personal injury by a party or its agents, employees, contractors, or assigns, or by third persons, arising out of and during this Agreement shall be determined according to applicable law.

9. SDSM&T shall not, without the express prior written consent of the CITY, authorize or allow any commercial advertising on the exterior of the Facility. Nothing herein shall be construed to prohibit appropriate signs, in compliance with all CITY, State and Federal laws, which identify, encourage attendance or patronage, or otherwise directly support the use of the Facility as a Children's Science Center, or specific programs, events, or activities at the Facility, provided such signs do not include any commercial advertising of products or services available off the premises.

10. SDSM&T shall allow no lien or other encumbrance against the Facility. In the event such lien or encumbrance is placed against the property, SDSM&T shall within sixty (60) days, cause such lien or encumbrance to be satisfied, voided, or otherwise removed. CITY shall have the right, upon failure by SDSM&T to cause any lien or encumbrance to be timely removed, to satisfy such lien or encumbrance and to recover its costs, including sums advanced, from SDSM&T by any appropriated proceedings. The provisions of this section shall not create any rights in third parties, but shall be enforceable only between the parties hereto.

11. SDSM&T shall allow access by authorized agents of the CITY to all or any portion of the Facility at all reasonable times for the purpose of inspecting the Facility and other authorized purposes not unreasonably inconsistent with the use of the Facility by SDSM&T. Such inspections by the CITY's authorized agents shall be done at a time and in a manner so as to not unreasonably interfere with SDSM&T's use of the Facility.

IN WITNESS WHEREOF, the parties have executed this Agreement this 21 day of December, 1998.

SOUTH DAKOTA BOARD OF REGENTS

By: James O. Hansen
Its President

CITY OF RAPID CITY

By: Jim Shaw
Jim Shaw, Mayor

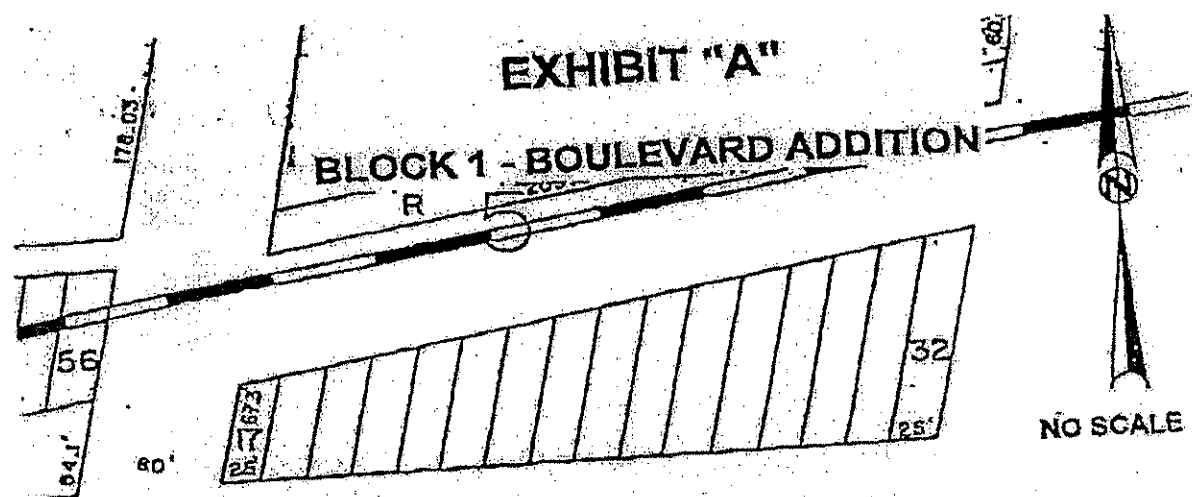
ATTEST:

Charles J. Schmidt
Finance Officer

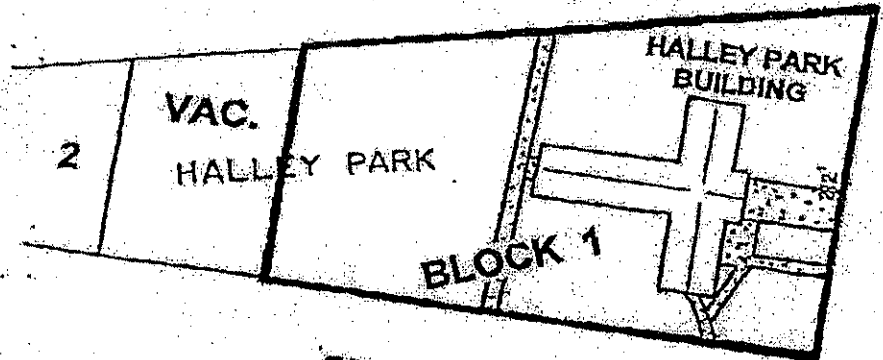
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EXHIBIT "A"

BLOCK 1 - BOULEVARD ADDITION

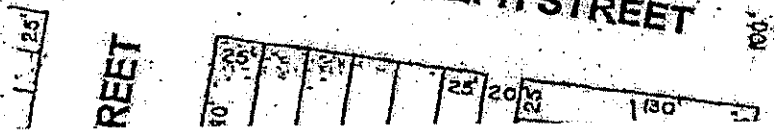


MAIN STREET



ST. JOSEPH STREET

WEST BOULEVARD



REET

