

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **RESURVEY OF THE WEST BOULEVARD HISTORIC DISTRICT**

THIS IS AN AGREEMENT made on this \_\_\_\_\_ day of \_\_\_\_\_, 2015 between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and Rosin Preservation, LLC hereinafter referred to as CONSULTANT. This agreement concerns Phase 2, Phase 3, and Phase 4 of the West Boulevard Historic District Resurvey as identified in the associated RFP. OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect to the performance of professional consulting services by CONSULTANT and the payment for those services by OWNER as set forth below.

#### **SECTION 1 - BASIC SERVICES OF CONSULTANT**

##### **1.1 General**

CONSULTANT shall provide to OWNER professional consulting services for the West Boulevard Resurvey Phase 2, Phase 3, and Phase 4 to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional consulting representative for the Project.

##### **1.2 Scope of Work**

The Basic Services Scope of Work is specifically described in Exhibit A, and generally described as Phase 2 and 3 (Tasks 1 – 5) as follows. Task 1 includes Project Kick-off and a Public Meeting. Task 2 includes Field Survey and Photography of resources in the existing District boundary and boundary expansion. Task 3 includes Archival Research. Task 4 includes Data Entry into the SHPO online database and an update to the existing records. Task 5 includes Data Analysis. Deliverables will include a written statement from SHPO that they have approved the approximately 1,150 entries in the online database, one (1) printed copy of each of the survey forms, and a digital copy of all the photographs to both SHPO and CITY. Tasks 1 – 5 and all work products submitted to SHPO shall be completed according to the requirements in the South Dakota Historic Resource Manual, 2006.

#### **SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT**

##### **2.1 Services Requiring Authorization in Advance**

If authorized in writing by OWNER, CONSULTANT shall furnish Additional Services of the types listed in paragraphs 2.1.1 through 2.1.4, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A; these will be paid for by OWNER as indicated in Section 5.

- 2.1.1 Services resulting from significant changes in the general scope, extent or character of the Project including, but not limited to, changes in size, complexity, or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents.

- 2.1.2 Preparing to serve or serving as consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).
- 2.1.3 Additional services in connection with the Project, excluding services, which are to be furnished by OWNER in accordance with Section 3, and services not otherwise provided for in this Agreement.
- 2.1.4 Additional services may include Phase 4 of the Request for Proposal if funding is received. Phase 4 shall include:
  - a. Draft Survey Report
  - b. Public meeting to present findings
  - c. Revised Survey Report
  - d. Final Deliverables

These services shall begin on or around July 1, 2015 and shall be completed on or before November 15, 2015. A Notice to Proceed for these additional services shall be provided prior to the consultant initiating any work on these additional services.

### **SECTION 3 - OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

- 3.1 Brett Limbaugh, Director, Rapid City Community Planning and Development Services, or his designee shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Mr. Limbaugh shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project.
- 3.2 Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.
- 3.3 Examine all studies, reports, sketches, drawings, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
- 3.4 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services.
- 3.5 Furnish or direct CONSULTANT to provide negotiated Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

### **SECTION 4 - PERIOD OF SERVICE**

- 4.1 The CONSULTANT'S period of service shall complete the scope of work stated in Exhibit A for Basic Services by May 22, 2015. The CONSULTANT'S services shall be provided in general accordance with the schedule as defined in EXHIBIT B.

## SECTION 5 - PAYMENTS TO CONSULTANT

### 5.1 Methods of Payment for Services and Expenses of CONSULTANT

- 5.1.1 *For Basic Services.* OWNER shall pay CONSULTANT for Basic Services rendered under Section 1 (Scope of Work in Exhibit A) an amount not-to-exceed \$30,000.

5.1.1.1 *Fixed Fee.* A fixed fee of Thirty Thousand Dollars (\$30,000) shall be paid on a prorated share based on the amount of work completed upon each billing.

- 5.1.2 *For Additional Services.* OWNER shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

5.1.2.1 *Fixed Fee.* A fixed fee of twenty one thousand dollars (\$21,000) shall be paid on a prorated share based on the amount of work completed upon each billing and one invoice for tasks 6-9.

### 5.2 Times of Payments

- 5.2.1 *For Basic Services.* CONSULTANT shall submit invoices for one or more tasks upon documentation and approval of their completion by OWNER according to the due dates identified in Exhibit B.

For these services the OWNER shall make prompt separate payments to the CONSULTANT based on the invoices associated with Tasks 1 – 5 submitted by the CONSULTANT, up to 90% of the maximum fee for each Task as shown on Exhibit C. The remaining 10% shall be paid upon submission of all acceptable deliverables for Basic Services to the OWNER.

- 5.2.2 *For Additional Services.* CONSULTANT shall submit invoices for one or more tasks upon documentation and approval of their completion by OWNER according to the due dates identified in Exhibit B.

For these services the OWNER shall make prompt separate payments to the CONSULTANT based on the invoices associated with Tasks 6 – 9 submitted by the CONSULTANT, up to 90% of the maximum fee for each Task as shown on Exhibit C. The remaining 10% shall be paid upon submission of all acceptable deliverables for Additional Services to the OWNER.

### 5.3 Other Provisions Concerning Payments

- 5.3.1 If OWNER fails to make any payment due CONSULTANT for services and expenses within forty-five (45) days after receipt of CONSULTANT's statement therefore, the amounts due CONSULTANT will be increased at the rate of 1.5%

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per month from said forty-fifth day, and in addition, CONSULTANT may, after giving seven (7) days written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

- 5.3.2 In the event of termination by OWNER upon completion of any phase of Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT also will be reimbursed for the charges of independent professional associates and consultants employed by CONSULTANT to render Basic Services incurred through such phase. In the event of any such termination, CONSULTANT will be paid for unpaid Reimbursable Expenses previously incurred.
- 5.3.3 The employees of CONSULTANT, professional associates and consultants, whose time is directly assignable to the program shall keep and sign a time record showing the element of the Project, date and hours worked, title of position and compensation rate.
- 5.3.4 *Records.* The CONSULTANT shall maintain an accurate cost keeping system as to all costs incurred for this Agreement and shall produce for examination books of accounts, bills, invoices and other vouchers or certified copies thereunder if originals be lost. CONSULTANT shall produce these records at such reasonable time and place as may be designated by the OWNER and shall permit extracts and copies thereof to be made during the contract period and for three years after the date of final payment to CONSULTANT.

CONSULTANT shall maintain time records and payroll records of the principal and all personnel for time spent performing work on project described in this Agreement for a period of three years from the conclusion of the project.

Upon reasonable notice, the CONSULTANT will allow OWNER'S auditors to audit all records of the CONSULTANT related to this Agreement. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after final payment under Agreement is made and all other pending matters are closed.

- 5.3.5 *Inspection of Work.* OWNER auditors shall at reasonable times be accorded proper CONSULTANT facilities for review and inspection of the work in this Agreement. OWNER shall have access to CONSULTANT'S premises and to all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to this Agreement.
- 5.3.6 *Audits.* The CONSULTANT shall, with reasonable notice, afford representatives of the OWNER reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require; shall produce and exhibit such books, accounts, documents and property as he may determine necessary to inspect and shall, in all things, aid him in the performance of his duties.
- 5.3.7 Payment shall be made subject to audit by duly authorized representatives of the OWNER.

5.3.8 In the event the services of the contract are terminated by the OWNER for fault on the part of the CONSULTANT, the agreement shall be null and void, and, the OWNER shall be entitled to recover payments made to the CONSULTANT on the work which is the cause of the at-fault termination. The CONSULTANT shall be paid only for work satisfactorily performed and delivered to the Owner up to the date of termination. After audit of the CONSULTANT'S actual costs to the date of termination and after determination by the CONSULTANT of the amount of work satisfactorily performed, the CONSULTANT shall determine the amount to be paid to the OWNER.

#### **5.4 Ownership of Data**

Documents and all products of this Agreement are to be the property of the OWNER.

#### **5.5 Publication and Release of Information**

The CONSULTANT shall not copyright material developed under this Agreement without written authorization from the OWNER. The OWNER reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

#### **5.6 Acquisition of Property or Equipment**

The acquisition of property or equipment will be in accordance with 49 CFR 18.32.

#### **5.7 Personnel Employment**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fees, commission, percentage, brokerage fee, gift or contingent fee.

#### **5.8 Nondiscrimination/ADA**

The CONSULTANT agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964. The CONSULTANT agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports to the State. The CONSULTANT agrees to provide services in compliance with the Americans with Disabilities Act of 1990.

#### **5.9 Claims**

To the extent authorized by law, the CONSULTANT shall indemnify and hold harmless the OWNER, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney fees, to the extent such claims

are caused by any negligent performance of professional services by, the CONSULTANT, its employees, agents, subcontractors or assignees.

It is further agreed that any and all employees of either party, while engaged in the performance of any work or services, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

#### **5.10 Acceptance and Modification**

This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled after consultation with, and approval in writing by, the parties to this Agreement.

#### **5.11 Termination or Abandonment**

The CONSULTANT and the OWNER share the right to terminate this Agreement upon giving thirty (30) days written notice of such cancellation to the other party. If this Agreement is terminated under this paragraph, CONSULTANT shall deliver to OWNER all work product produced up to the time of termination. OWNER shall reimburse CONSULTANT for all work completed to the date of termination.

### **SECTION 6- GOVERNING LAW**

This agreement and any dispute arising out of this agreement shall be governed by the laws of the State of South Dakota.

#### **6.1 Forum Selection**

Any dispute arising out of this contract shall be litigated in the state court in South Dakota, which includes the City of Rapid City, currently, the Seventh Circuit Judicial Court for the State of South Dakota.

### **SECTION 7 - MERGER CLAUSE**

This written agreement including Exhibit A "Scope of Work, Exhibit B "Project Schedule," Exhibit C "Man-hour Estimate," and Exhibit D – "Request for Proposals for the Resurvey of the West Boulevard Historic District" constitutes the entire agreement of the parties. No other promises or consideration are a part of this agreement.

### **SECTION 8 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

CONSULTANT certifies, by signing this agreement, that neither it nor its Principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement by their duly authorized officers on the day, month and year first written above.

**OWNER:**

BY:

\_\_\_\_\_  
Sam Kooiker, Mayor  
City of Rapid City  
300 Sixth Street  
Rapid City, South Dakota 57701

ATTEST:

\_\_\_\_\_  
FINANCE OFFICER

**CONSULTANT:**

BY:

\_\_\_\_\_  
Elizabeth Rosin  
Rosin Preservation, LLC

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, personally appeared \_\_\_\_\_ known to me to be a \_\_\_\_\_ of \_\_\_\_\_, and acknowledge to me that S/HE did sign the foregoing document as such officer and for the purposes therein stated.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(SEAL)

**Address for Giving Notices:**

**City of Rapid City**

Division of Long Range Planning  
300 Sixth Street  
Rapid City, South Dakota  
57701

**Address for Giving Notices:**

**Rosin Preservation, LLC**

215 W. 18<sup>th</sup> Street,  
Suite 150  
Kansas City, Missouri  
64108



## Exhibit A: Scope of Work

### Basic Services

#### RFP Phase 1 (Completed under separate contract)

#### RFP Phase 2

##### **Task 1: Project Kick-off and Initial Public Meeting**

Begin the project with a meeting between the consultant, City staff, and the Rapid City Historic Preservation Commission to identify goals and review the work performed in Phase 1. Conduct an initial public meeting to inform property owners of the project scope and to gather information about resources not previously surveyed.

##### **Task 2: Field Survey and Photography**

Field survey and documentation of approximately 1,150 resources, including resurvey of those in the existing District and survey of those in the suggested boundary expansion. Work will include visual inspection of all buildings and structures; recordation of data relating to physical characteristics of the resources and their settings; digital photography of all buildings; and preliminary integrity assessments. Where applicable and cost effective, utilize new technologies, such as tablet computers with built-in cameras or proprietary survey programs, such as those with the capability to link to GIS data and imbed photographs, to increase efficiency in the field. Take new digital photos from the same orientation as the previous survey photos on file. Label and submit one photo for each resource as detailed in Appendix A of the South Dakota Historic Resources Survey Manual, 2006. Photographs must be an uncompressed JPEG or TIFF file with a minimum size of 1600 x 1200. The manual can be found at:

<http://history.sd.gov/preservation/OtherServices/HSArchitecturalSurveyManual2006.pdf>

##### **Task 3: Archival Research**

Using the bibliography generated in Phase 1, conduct archival research to expand the historic contexts for the survey area and to develop any missing historic contexts. Research should also identify dates of construction for resources not previously surveyed. This work could be performed concurrent with field survey.

#### RFP Phase 3

##### **Task 4: Data Entry**

Enter information gathered in the field into the SHPO online database. Update existing records. Complete records added in Phase 1 to their fullest extent. Print all pages of the survey forms for all 1000 resources after SHPO approves the entries. Submit the printed survey forms with the photos to SHPO, with a duplicate set provided to CITY. Provide SHPO and CITY with a CD-R of images per the guidelines in the Survey Manual.

##### **Task 5: Data Analysis**

Analyze data gathered in the field to determine important characteristics and trends of development within the survey area. Areas to examine should include, but are not limited to, date of construction, architectural style, and integrity.

Additional Services

**RFP Phase 4**

**Task 6: Draft survey report**

Prepare a draft survey report that summarizes the findings of the resurvey. The report will follow the procedures and specifications identified in the South Dakota Historic Resources Manual, 2006 and will include the project methodology; a historic context that describes the developmental evolution and historical significance of the survey area and places it in context with the general development of Rapid City; a summary of survey results that presents the findings according to building style, date of construction, and integrity; and recommendations for future preservation action, including the possibilities of expanding/changing District boundaries and/or developing a local register district, a conservation overlay district, or design guidelines. Maps and photographs will illustrate the report. It will also include a list of all surveyed properties. All maps will be in black and white and sized for easy reproduction. Submit the draft survey report to the City and SHPO for review and comment.

**Task 7: Public Meeting**

Following submittal of the draft survey report and the survey forms, conduct a second public meeting to present the findings and recommendations to the community. The meeting will include a discussion of the National Register of Historic Places and the benefits and responsibilities associated with register-listing.

**Task 8: Final Survey Report**

Revise the Survey Report to incorporate comments from the City, SHPO, and the public. Submit the final survey report to the City and SHPO.

**Task 9: Final Deliverables**

Upon completion of the project, provide digital and hard copies of all work products to the City and SHPO.



**Exhibit B: Tentative Project Schedule**

**Basic Services**

Task 1 - 3: Due April 1, 2015  
Task 4 & 5: Due May 22, 2015

Final Invoice and deliverables due May 22, 2015.

**Additional Services**

Task 6 – 9: Due on or before November 15, 2015 as determined by the Notice to Proceed

**Exhibit C: Man-hour Estimate**

**Basic Services**

Task	Fee
1) Kick-off, Preparation & Project Management	\$1,500
2) Field Survey and Photography,	
3) Archival Research	\$16,500
4) Data Entry	
5) Data Analysis	\$12,000

**Additional Services**

Task	Fee
6) Draft Survey Report	\$14,000
7) Public Meeting	\$1,500
8) Revised Survey Report	\$1,500
9) Final Deliverables	\$4,000

**Exhibit D: Request for Proposals**

(attached)