

MEMORANDUM OF JOINT POWERS AGREEMENT

Between

The City of Rapid City, South Dakota

And

The Office of History, State of South Dakota

This Memorandum of Joint Powers Agreement is entered into this 19th date of February, 2007 between the City of Rapid City, South Dakota (hereinafter referred to as "City") and the South Dakota Office of History, Department of Education and Cultural Affairs (hereinafter referred to "Office").

WHEREAS, the Office is required by SDCL 1-19A-11.1 and the regulations promulgated thereunder to investigate and comment on projects that will encroach upon, damage, or destroy any historic property included in the national or state registers of historic places; and

WHEREAS, the City requires the issuance of building, moving, and demolition permits for all buildings, including Historic Property, pursuant to Chapter 15 of The Rapid City Municipal Code;

NOW THEREFORE, the City and Office, pursuant to SDCL Ch. 1-24 and in consideration of the mutual covenants and agreements set out herein, agree as follows:

SECTION I. DEFINITIONS

The following definitions apply when used in this Agreement:

Adverse Effect: Any project that will encroach upon, damage or destroy any Historic Property.

City: The city of Rapid City, South Dakota, including the Rapid City Historic Preservation Commission.

Contributing property, building or structure: Any property, building or structure that is described as "contributing" to the listing of Historic Property, which description is contained in the documentation on file with the National Park Service or the Office supporting the listing of any property or district on the National or State Registers of Historic Places.

Environs: A term that is generally used to identify the area surrounding historic property within which a project would have an impact upon that property. In Rapid City, the environs includes any property or portion thereof, located within 50 feet of property included on the National or State Registers of Historic Places. For purposes here, the measurement of streets, alleys and other public rights-of-way shall not be counted as

part of the 50 foot zone. In cases of an unusually significant or intense project, the Historic Preservation Commission can determine whether or not there is justification for expanding the environs.

Historic Property: Any property that is listed on the National or State Registers of Historic Places.

Historic District: An area listed on the National or State Registers of Historic Places that contains historic properties.

National Register: The National Register of Historic Places created by the National Historic Preservation Act of 1966, as amended.

Office: The Office of History of the South Dakota Department of Education and Cultural Affairs.

Project: Any project or undertaking conducted on, or within the environs of Historic Property or a Historic District, or a project or undertaking that meets the conditions of SDCL 1-20-22.

Standards: The standards adopted by ARSD 24:52:07:02 and 24:52:07:04, and the Secretary of Interior's Standards for the Treatment of Historic Property, revised 1990, National Park Service, U.S. Department of the Interior.

State Register: The State Register of Historic Places, prepared by the Office pursuant to SDCL 1-19A-5.

SECTION II. PURPOSE

The purpose of this Agreement is to allow the City to perform investigation and comment on potential Adverse Effects, as described more fully below.

SECTION III. GENERAL RESPONSIBILITIES

1. The City hereby agrees to, and shall, submit to the Office for review all projects that have an Adverse Effect on Historic Property except as exempted in Section III (5) of this Agreement.
2. The City shall maintain a list, and an accurate and current map of Rapid City, that designate the location of all Historic Property and all Contributing Property within Historic Districts. The City shall periodically consult with the Office to ensure that the list and map are kept current.
3. The City shall maintain, and keep current, a list of Historic Property within Rapid City on which a "Restrictive Covenant and Declaration of Preservation Restrictions" (hereinafter referred to as "Covenant") is held by Preserve South Dakota, Inc. The Office agrees to provide this information to the City on a timely basis.

4. The City shall comply with all Standards when the City performs projects on Historic Property, and shall submit such projects to the Office for SDCL 1-19A-11.1 reviews unless the projects are exempt from such review under Section III (5) of this Agreement.
5. The Office hereby agrees that the following Projects, except as specified in Section III (6) of this Agreement, will have no adverse effect on Historic Properties, and that the City is not required to submit the following Projects to the Office for review under SDCL 1-19A-11.1:
 - A. The issuance of building permits for interior construction within residential Historic Properties, except as provided in Section III (6)(F) of this Agreement, and provided that, and subject to the requirement that, the City makes the Standards available to the property owners.
 - B. The issuance of certain building permits for construction on Historic Properties, except as provided in Section III (6)(F) of this Agreement, and only when (i) the City's Historic Preservation Commission has issued a finding, based on the Standards, that the Project will have no Adverse Effect on the Historic Property, and (ii) the Office has concurred with the Commission's finding of no Adverse Effect. The City shall notify the Office of the Commission's finding of no Adverse Effect by facsimile transmission, by courier, or by U.S. mail. The Office must notify the City of its objection to the Commission's finding of no Adverse Effect within three business days after receipt of the Commission's finding. The Office's notification of objection may be served on the City by telephone (with a followup written notification), by fax, by courier delivery, or by U.S. mail. Failure of the Office to respond within three business days after its receipt of the Commission's finding will mean that the finding of no Adverse Effect will stand. If the Office timely objects to the Commission's finding of no Adverse Effect, the Project must be submitted to the Office for review under SDCL 1-19A-11.1.
 - C. The installation, replacement and repair of, and performance of routine maintenance on, traffic control devices (excluding support buildings necessary for operation of those devices), including but not limited to, stop signs, yield signs, and traffic signals, provided that, and subject to the requirement that, such installation and replacement is required according to the Manual on Uniform Traffic Control Devices.
 - D. Routine maintenance or repair of underground city utilities within public rights-of-way. The Parties agree that this exemption does not apply to infrequent, large-scale reconstruction projects that are not part of the City's normal maintenance and repair program.
 - E. Routine maintenance or repair of above-ground utilities, both public and private, such as curb, gutter, storm sewer and other similar projects, and excluding street lights and roadways, within public rights-of-way. The Parties agree that this exemption does not apply to infrequent, large-scale reconstruction projects that are not part of the City's normal maintenance and repair program.

- F. Routine maintenance, repair, and re-paving of roadways. The Parties agree that this exemption does not apply to reconstruction of roadways.
 - G. Maintenance or repair of city resources that does not result in a loss of historical integrity of the resource, such as the loss of historic features, artifacts, structural support, historical setting and other elements which qualified the resource, or property in the environs of the resource, as Historic Property. "Maintenance or repair" includes washing, waxing, repainting, replacement of exhausted elements of utilities such as light bulbs, care of lawns and other greenery, and other activities that do not remove, abrade, alter or destroy the resource or its physical elements.
 - H. The operation and maintenance of city parks provided that projects meet the provisions of Section III (5)(G) of this Agreement.
 - I. The construction or alteration of signs subject to review by the City's Historic Sign Board.
 - J. Paving, maintenance and repair of existing alleys, sidewalks, driveways, and parking areas that do not change any horizontal dimensions.
 - K. The issuance of building permits for interior construction on non-contributing buildings within Historic Districts or non-historic buildings in the environs of Historic Properties.
6. The Parties recognize and agree that the Projects listed below will potentially have Adverse Effects on Historic Properties, are not subject to Section III (5) of this Agreement, and must be submitted to the Office for review under SDCL 1-19A-11.1, after the Rapid City Historic Preservation Commission has reviewed and commented on the Projects.
- A. The issuance of demolition permits for Projects on Historic Properties or contributing buildings. "Demolition" for this subsection is defined as the complete removal of the building.
 - B. The issuance of moving permits for Projects on Historic Properties.
 - C. The issuance of building permits for Projects proposing significant additions to Historic Properties. "Significant additions" are additions that are as large as, or larger than, the existing foot-print of the original building or structure, or that add one or more stories to the original building or structure.
 - D. The issuance of building permits for the construction of dormers and/or skylights, visible from the street, on Historic Properties.
 - E. The issuance of building permits that alter the roofline of Historic Properties.

- F. The issuance of building permits for Projects on Historic Properties on which a Covenant is held by Preserve South Dakota, Inc. or its successor and assigns.

SECTION IV. COVENANTS

1. This Agreement will be effective for five (5) years from the date of the last signature of the Party, and may, upon written agreement of the Parties, be extended for additional five (5) year terms.
2. Notwithstanding any of the provisions of this Agreement, this Agreement depends upon the continued availability of appropriated funds and expenditure authority. This Agreement will be terminated if either the Legislature of the State of South Dakota or the City fails to appropriate funds or grant expenditure authority to the Office or the City to carry out the functions encompassed by this Agreement. Each Party shall provide the other Party with thirty (30) days written notice that appropriations or expenditure authority have not been provided, and this Agreement shall terminate at the end of that thirty (30) day notice period. If a Party is not provided with notice of funding termination in a timeframe that would allow thirty (30) day notice, notice will be provided as soon as possible.
3. This Agreement, any part thereof, and the benefits to be received hereunder, shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation or other entity.
4. This Agreement may not be modified or amended except in writing, which writing shall be expressly identified as part of this Agreement and signed by the Parties or their designees.
5. This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.
6. The Parties declare that no separate entity as contemplated in SDCL ch. 1-24 is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the respective Parties and their authorized designees as contemplated in SDCL 1-24-5.
7. This Agreement and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interest, and assigns of each of the Parties.
8. Pursuant to SDCL 1-24-6.1, the Office shall file a copy of this Agreement with the Attorney General and the Legislative Research Council not more than fourteen (14) days after it is executed.

This Agreement does not contemplate the payment of any money, or transfer of any funds of any nature, from the Office to the City for the responsibilities undertaken by the City under this Agreement.

Jim Shaw
Mayor, City of Rapid City
Jim Shaw

2-21-07

ATTEST:

James F. Weston
JAMES F. WESTON, FINANCE OFFICER

Jay D. Voigt
State Historic Preservation Officer

03-06-2007

ADDENDUM TO MEMORANDUM OF JOINT POWERS AGREEMENT
BETWEEN THE CITY OF RAPID CITY AND
THE OFFICE OF HISTORY, STATE OF SOUTH DAKOTA

This Addendum is entered into by and between the City of Rapid City, (hereafter “City”) a South Dakota municipal corporation, and the Office of History, Department of Tourism, State of South Dakota (“Office”).

WHEREAS, the City and Office entered into a Memorandum of Joint Powers Agreement on February 19, 2007; and

WHEREAS, the Memorandum of Joint Powers Agreement was for a term of five years and provided that the agreement may be extended by the parties for additional five year terms;

WHEREAS, the City and the Office are currently working together to draft a new agreement which differs in some ways from the previous Memorandum of Joint Powers Agreement but which is not yet in its final form; and

WHEREAS, the parties have determined it is in their mutual best interest to extend the term of the Memorandum of Joint Powers Agreement to December 31, 2013.

NOW THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. The parties agree to extend the term of the Memorandum of Joint Powers Agreement, attached as Exhibit A, to December 31, 2013.
2. During this time the terms and conditions found in the Memorandum of Joint Powers Agreement remain in full force and effect.
3. This Addendum along with the Memorandum of Joint Powers Agreement constitutes the entire agreement of the parties.
4. 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.

[The remainder of this page is left intentionally blank.]

Dated this _____ day of _____, 2013.

CITY OF RAPID CITY

By: _____
Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(SEAL)

APPROVED AS TO FORM:

Carla Cushman, Assistant City Attorney

Dated this _____ day of _____, 2013.

State Historic Preservation Officer

1-19A-11.1. Preservation of historic property--Procedures. The state or any political subdivision of the state, or any instrumentality thereof, may not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places until the Office of History has been given notice and an opportunity to investigate and comment on the proposed project. The office may solicit the advice and recommendations of the board with respect to such project and may direct that a public hearing be held thereon. If the office determines that the proposed project will encroach upon, damage or destroy any historic property which is included in the national register of historic places or the state register of historic places or the environs of such property, the project may not proceed until:

(1) The Governor, in the case of a project of the state or an instrumentality thereof or the governing body of the political subdivision has made a written determination, based upon the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to the historic property, resulting from such use; and

(2) Ten day's notice of the determination has been given, by certified mail, to the Office of History. A complete record of factors considered shall be included with such notice.

Any person aggrieved by the determination of the Governor or governing body may appeal the decision pursuant to the provisions of chapter 1-26.

The failure of the office to initiate an investigation of any proposed project within thirty days from the date of receipt of notice thereof is approval of the project.

Any project subject to a federal historic preservation review need not be reviewed pursuant to this section.

Source: SL 1987, ch 20.
