

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is entered into as of the 17th day of October, 2006 by and between the **National Trust For Historic Preservation In The United States**, a charitable, educational and nonprofit corporation created by an Act of Congress, whose principal offices are at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036, (hereafter referred to as the "National Trust") and the **general government of the city of Rapid City, South Dakota**, whose principal offices are at 300 Sixth Street, Rapid City, SD 57701 (hereafter referred to as the "City").

WITNESSETH:

WHEREAS, the **National Trust Main Street Center**, a program of the National Trust, provides training, technical assistance and consulting services in support of efforts to plan and implement programs designed to promote the preservation of historic buildings and the revitalization of the business districts; and

WHEREAS, the City wishes to retain the National Trust to provide such services; and

WHEREAS, the National Trust is willing and able to provide the services required;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the parties have agreed as follows:

1. **Term.** The Term of this Agreement will be effective as of **October 17, 2006**. It will conclude no later than **April 30, 2007**.
2. **Services to be Provided by National Trust.** The National Trust agrees to provide all of the services, materials, and personnel required to carry out a three-day Main Street Assessment for downtown Rapid City. The National Trust will provide two program officers to conduct the Assessment. The objectives of the Assessment are to identify some of the commercial district's major problems, opportunities, and needs; to provide community members with information about the Main Street Four-Point Approach; to determine whether or not the Main Street Four-Point Approach is an appropriate strategy for the commercial district's revitalization; and to recommend a realistic, achievable course of short term (12 to 24 months) activities to launch the revitalization program. National Trust staff will work with the City to develop the agenda and specific objectives for the Assessment in advance. National Trust staff will also conduct demographic and other research in advance. While on site, staff will tour the commercial district, hold meetings and interviews with a variety of public and private constituents, make an informational presentation about the Main Street Four-Point Approach™, formulate recommendations, and make a verbal presentation of preliminary findings. Following the on-site portion of the service, the City will receive either a detailed written report of findings or a follow-up on-site consultation related to the Assessment findings and recommendations.
3. **Services to be Provided by the City.**

A. The City will provide background information and other preliminary materials for the National Trust's review no less than fourteen (14) calendar days in advance of the Assessment visit, including but not limited to the following:

- i. Sections of the community's comprehensive plan which deal specifically with the commercial district
- ii. A map that shows the location of the commercial district in relation to the rest of the city, indicating locations of shopping centers, malls, schools, residential areas, industries, recreation, and other significant sites
- iii. A map showing building use in the district (retail, service, government, housing, religion, vacancies, etc.) and locations of customer, employee and visitor parking
- iv. Any parking studies for the commercial district completed during the past five years
- v. Any market studies for the commercial district, or for the community as a whole, completed during the past five years
- vi. A list of businesses in the district, categorized by location and type, if possible
- vii. A list of key downtown revitalization participants
- viii. A current calendar of promotional events and activities that occur within the district
- ix. The mission statement and work plans of the organizations that have, or could have, a significant role in the revitalization of the district
- x. Information about development or rehabilitation incentives available in the community for commercial development – particularly those that focus on the downtown district
- xi. A recent newspaper from the community
- xii. Names and contact information for local news media
- xiii. Any other information that may provide additional insight into the issues that confront the revitalization of the commercial district

B. The City will make all arrangements necessary to ensure the participation of the individuals selected to participate in the activities outlined in Section 2, Services to be Provided by the National Trust, above.

C. The City will provide a representative to attend each session which is open to the general public, each session focused on the City, and the follow-up on-site consultation, if any, which is conducted by the National Trust.

D. During each of the visits, meetings, seminars, workshops, training sessions, and other events, the City will be responsible for all logistical arrangements, including the following:

- i. providing adequate accessible meeting space and work facilities;
- ii. reserving hotel accommodations for National Trust staff, if required;
- iii. preparing and confirming schedules;
- iv. providing suitable publicity, if required;

- v. providing local transportation within the region for National Trust staff members and consultants during such events; and
- vi. coordinating all such arrangements with the assigned National Trust staff.

4. **Schedule.** The tasks outlined above will be completed according to a schedule to be determined by the mutual written agreement of both parties, provided that the National Trust's services shall be delivered no later than **April 30, 2007**.

5. **Compensation.**

A. As compensation for all services performed pursuant to this Agreement, the City agrees to pay the National Trust the stipulated sum of **Fifteen Thousand Dollars (\$15,000.00)**.

B. The City agrees to pay an additional amount not to exceed **Two Thousand Seven Hundred Twenty-Five Dollars (\$2,725.00)** as reimbursement for travel expenses incurred in the performance of this Agreement. All travel will be performed subject to rates and standards applicable to travel by National Trust staff personnel, which are comparable to Federal Travel Regulations with respect to transportation, lodging, subsistence and miscellaneous expenses.

C. The compensation authorized above will be paid in response to invoices that will be submitted by the National Trust. Each invoice will contain a detailed description of the charges incurred for services, and direct expenses. Receipts or other appropriate records of the costs incurred will be submitted with the request for the reimbursement of direct expenses. Invoices will be paid by the City within thirty (30) days following receipt.

D. Payments are to be sent to:

National Trust for Historic Preservation
Attn: NTMSC, contract #2940
PO Box 320
Washington, DC 20055-0320

E. The National Trust will maintain copies of all original invoices, time sheets or other documents describing personnel time, fees, materials charges and other expenses for a period of three (3) years from the date of the invoice. The National Trust will make such records available for inspection, reproduction, transcription or audit by the City or by its certified public accountant at reasonable intervals whenever the National Trust's offices are open for the normal conduct of business.

6. **Insurance.**

A. The National Trust will secure and maintain in effect during the term of this Agreement, a policy or policies of insurance providing coverage of the following risks in the minimum amounts indicated:

Workers' Compensation	Statutory Amount
Commercial General Liability	\$1,000,000.00 aggregate and \$1,000,000.00 per occurrence
Automobile Liability	\$1,000,000.00 combined single limit

B. Upon request, the National Trust will provide the other party with a certificate indicating that such insurance is in effect for the period covered by the term of this Agreement.

7. Copyright & Intellectual Property Rights.

A. City Materials. It is mutually agreed that the Assessment report, if any, produced solely for the use of the City pursuant to this Agreement ("City Materials") will represent a "work made for hire" for purposes of the United States copyright law, 17 U.S.C., Section 101 et seq., and that the City will be the exclusive owner of all copyright and proprietary rights therein, including all such rights in any secondary or derivative publications based thereon. To the extent that any such City Materials do not constitute work made for hire as a matter of law, the National Trust hereby transfers and assigns all such rights to the City (including without limitation, the right to copyright such City Materials and any renewals thereof in the name of the City) and the National Trust agrees to provide any further documentation of this transfer that the City may require. The National Trust shall secure the same agreement from all employees and independent contractors performing services in connection with the National Trust's performance under this Agreement. Notwithstanding the foregoing, in the event that the City fails to make full payment as required herein, all rights to the City Materials shall revert to the National Trust.

B. National Trust Materials. It is mutually agreed that the National Trust shall retain all copyright, literary and property rights in all other publications, products and materials prepared by the National Trust prior or pursuant to this Agreement ("National Trust Materials") and the National Trust Materials will remain the sole and exclusive property of the National Trust.

8. Prohibition on Unauthorized Recording, Duplication and Distribution.

A. No videotape, audio, mechanical or other recording, reproduction or transcription of any conference, workshop, seminar, training program or other meeting conducted by the staff of the National Trust in the performance of this Agreement is authorized or permitted without the prior written approval of the Representative of the National Trust.

B. No person may manufacture, promote, distribute or sell any such recording, reproduction or transcription without the prior written approval of the Representative of the National Trust.

C. No person may reproduce, duplicate, distribute, or sell any National Trust-copyrighted or owned materials without the prior written approval of the Representative of the National Trust.

9. Notice. Any notices which either party is required or may desire to serve upon the other party shall be in writing and may be served either personally or by depositing the same in the mail (first class postage prepaid, certified and return receipt requested) or with a reputable overnight express delivery service (with confirmed delivery, charge prepaid or billed to shipper), addressed to the party to be served as follows, unless a different address is designated in writing by the party to be served. Notice shall also be required to be given by telephone, facsimile, or electronic mail on the same date as deposited in the mail. Notice given by mail alone shall not be sufficient.

City: Marcia Elkins, Director, Growth Management Department
City of Rapid City, South Dakota
300 Sixth Street
Rapid City, SD 57701
P: (605) 394-4120
F: (605) 394-6636
E: marcia.elkins@rcgov.org

National Trust: Michelle Hanson, Contracts Administrator
National Trust for Historic Preservation
1785 Massachusetts Ave. NW
Washington, DC 20036
P: 202-588-6346
F: 202-588-6059
E: michelle_hanson@nthp.org

10. Survival. The obligations and rights of the parties under this Agreement which by their nature would continue beyond the termination, cancellation, or expiration hereof, including without limitation those obligations and rights set forth in Section 7 (Copyright & Intellectual Property Rights) and 8 (Prohibition on Unauthorized Recording, Duplication and Distribution), will survive beyond the termination, cancellation, or expiration of this Agreement and shall remain in full force and effect.

11. Representatives.

A. Douglas Loescher, Executive Director, NTMSC, is hereby designated as the Representative of the National Trust and is authorized to exercise general direction, supervision, and administration of the performance of this Agreement on its behalf.

B. Marcia Elkins, Director, Growth Management Department, is hereby designated as the Representative of the City, and is authorized to exercise general direction, supervision, and administration of the performance of this Agreement on its behalf.

12. General Terms and Conditions. The general terms and conditions applicable to this Agreement are contained in **Exhibit A**, which is attached and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement with the signatures of their duly authorized representatives, effective as of the date first written above.

National Trust for Historic Preservation in the United States

By: _____
Stanley Lowe, Vice President, Community Revitalization


City of Rapid City, South Dakota

By: _____
Jim Shaw, Mayor

Attest:

By: _____
James Preston, Financial Officer

**APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE**

 10-23-06
Attorney Date

GENERAL TERMS AND CONDITIONS

1. Contractual Relationship. It is agreed and understood that the National Trust is furnishing its services as an independent contractor, and that nothing contained herein will be deemed to create an association, partnership, joint venture or employer-employee relationship between the parties.

2. Termination of Contract.

A. Either party may terminate this Agreement by written notice to the other party, if the other party fails or refuses to perform the work required by this Agreement or defaults in any manner in the performance of the terms and conditions of this Agreement. Default shall include, without being limited to, the failure of the City to comply with any of the payment provisions of this Agreement.

B. The City shall not issue a notice of termination pursuant to this subsection unless:

- i. The City has given the National Trust written notice specifying the nature of the default or failure to perform, and
- ii. The National Trust has failed to cure or correct the default or failure to perform within thirty (30) calendar days following the receipt of such notice.

C. Either party may terminate or suspend its obligations under this Agreement if substantial performance of such obligations is delayed, prevented, or rendered impractical by an event beyond the party's reasonable control and without its fault or negligence, including, but not limited to: acts of God, acts of war or the public enemy, terrorism, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, laws, regulations or orders of governmental authorities, curtailment of transportation facilities, or other emergency making it illegal, impossible or impractical to perform this Agreement as planned. The non-performing party shall not be liable to the other for such delay or failure to perform its obligations, except there shall be a pro rata reduction in the consideration which would otherwise be payable or due under this Agreement. Upon such circumstances arising, the non-performing party shall promptly notify the other party in writing and the parties shall meet forthwith to discuss what, if any, modification may be required to the terms of this Agreement, in order to reach a resolution.

3. Equal Opportunity. The parties agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or sexual orientation. The parties further agree to take affirmative action to assure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, sex, age, national origin or sexual orientation. The obligations of this Section will also extend to disabled veterans, Vietnam era veterans and handicapped persons. The parties further agree that they will comply with all applicable provisions of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented by Department of Labor regulations (41 CFR Part 60).

4. Governing Law. This Agreement is made in and will be governed exclusively by the laws of the District of Columbia.

5. Conflict of Interest.

A. No officer or employee of the National Trust and no member of its Board of Trustees may participate in any decision on behalf of the National Trust relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested; nor may any such officer or employee of the National Trust, or any member of its Board of Trustees have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. Should either party discover such a conflict of interest, either apparent or actual, during the Term of this Agreement, the party shall promptly inform the National Trust Contracts Office.

6. Assignability. Neither this Agreement, nor any interest in this Agreement, may be assigned by either party without the prior written consent of the other party.

7. Successors. This Agreement shall be binding upon, and will inure to the benefit of, the parties and their respective permitted successors and assigns.

8. Sole Agreement. This document constitutes the sole agreement between the parties concerning the services and obligations specified herein and it supersedes and replaces all prior and contemporaneous oral and written understandings pertaining to the subject matter hereof.

9. Modification. No amendment or modification of the terms or conditions of this Agreement will be valid unless in writing and signed by both parties.

10. Waiver. The failure of either party to partially or fully exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. No waiver shall be valid or binding unless in writing and signed by the waiving party.

11. Severability. If any provision of this Agreement or the application of any provision hereof to any person or circumstances is held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.