



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

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MEMORANDUM

TO: Mayor Sam Kooiker
Common Council

CC: Raymond Summers, Executive Director, The Journey Museum

FROM: Allison Marsland, Assistant City Attorney *AM*

DATE: April 5, 2012

RE: "Pap" Madison Cabin Move

On August 4, 2008, the Common Council approved a request by The Journey Museum to move the "Pap" Madison Cabin. The contract between The Journey Museum and Northland Building Movers, Inc., to move the cabin is attached. The City is not a party to the contract and is not expending any funds to move the cabin, but is a named third party beneficiary as the owner of the cabin. Due to these facts, Common Council authorization was not required in order for the Mayor and Finance Officer to sign the contract to acknowledge the City's status as a third party beneficiary. A copy of the agreement has been provided with this item for Council acknowledgment of this action.

Also presented for Council acknowledgment is a timeline for the move, which has been provided by Raymond Summers, the Executive Director of The Journey Museum. The move process is expected to take 4 – 5 days, and is planned as follows:

- Week of April 10 – 13, 2012: rough excavation around the cabin foundation.
- Monday, April 16, 2012: Northland equipment on site to prepare cabin for lift.
- Tuesday, April 17, 2012: Lift cabin and place on transport dollies.
- Wednesday, April 18, 2012: Actual move, assuming weather and all safety factors allow.
- Thursday, April 19, 2012: Set cabin on concrete pad at the Journey Museum.
- Friday, April 20, 2012: Contingency day.

The above schedule will be adjusted as necessary to ensure the safety of all involved and to prevent any damage to the cabin.

All involved have worked diligently to facilitate this move. The Journey Museum has communicated that it extends its thanks for the effort put forth toward this end.

Please contact me if you have any questions.

**ADDENDUM TO AGREEMENT
BETWEEN NORTHLAND BUILDING MOVERS, INC.,
AND THE JOURNEY MUSEUM TO MOVE THE MADISON "PAP" CABIN.**

THIS ADDENDUM TO AGREEMENT is made by and between Northland Building Movers, Inc., located at P.O. Box 56, 104 South C Avenue, New Underwood, South Dakota 57761 (the "Mover"), and the Museum Alliance of Rapid City Inc., a South Dakota domestic nonprofit, d/b/a The Journey Museum, with its principal place of business located at 222 New York Street, Rapid City, South Dakota 57701 (the "Contracting Party" or "CP").

NOW THEREFORE, be it agreed by the parties:

1. The parties agree this writing and the attached Moving and Indemnification Agreement together constitute the entire Agreement of the parties related to the contemplated move of the City-owned Madison "Pap" Cabin. There are no other oral or collateral agreements of any kind except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced in writing and signed by the parties hereto.
2. The parties agree that the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701 (the "City"), owns the Madison "Pap" Cabin, and that the City is an intended third party beneficiary of this Agreement between Mover and Contracting Party. This Agreement confers any and all attendant rights and remedies under this Agreement upon the City. No other person or entity, other than the parties and the City, has any rights or remedies under this Agreement. The parties may not amend or terminate this Agreement without the prior written consent of the City.
3. All of the terms and conditions set forth in this Agreement shall extend to and be binding upon the heirs, beneficiaries, assignees, or successors in interest of the parties and the third party beneficiary.
4. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).
5. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. Any legal action arising out of, or relating to, this Agreement shall be brought only in Pennington County, South Dakota, in the circuit court for the Seventh Judicial Circuit.

Dated this _____ day of _____, 2012.

NORTHLAND BUILDING MOVERS, INC.

By: _____

Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this _____ day of _____, 2012, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of Northland Building Movers, Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(seal)

Notary Public, South Dakota
My Commission Expires: _____

Dated this _____ day of _____, 2012.

MUSEUM ALLIANCE OF RAPID CITY, INC.

By: _____

Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this _____ day of _____, 2012, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of the Museum Alliance of Rapid City, Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(seal)

Notary Public, South Dakota
My Commission Expires: _____

Dated this 5th day of April, 2012.

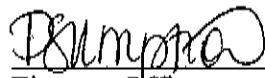
The City of Rapid City hereby acknowledges the execution of this Agreement between Mover and Contracting Party to move the City-owned Madison "Pap" Cabin. Further, the City of Rapid City acknowledges and accepts its status as a third party beneficiary to this Agreement.

CITY OF RAPID CITY



Mayor

ATTEST:



Finance Officer

(seal)

Northland Building Movers, Inc.
PO Box 56
New Underwood, SD 57761

Phone: 888-995-3944 Fax: 605-754-6446
e-mail: northlandmovers@hotmail.com



MOVING AND INDEMNIFICATION AGREEMENT

READ CAREFULLY. THIS AGREEMENT IS LEGALLY BINDING

THIS AGREEMENT ("Agreement") made this 10th day of February, 2012 by and between, Northland Building Movers, Inc. with offices at PO Box 56 – 104 S. C Ave New Underwood, SD 57761 ("**MOVER**") and The Journey Museum with offices at or located at 222 New York St. Rapid City, SD 57701 ("**OWNER**") ("**Contracting Party**", or "**CP**").

RECITALS:

- A. ~~OWNER~~ ^{The City of Rapid City} owns a building, structure, or other structure, hereinafter ("**Building**"), located at _____; and
- B. ~~OWNER~~ ^{The City of Rapid City ("City")} also owns certain acres of land located at _____; and
- C. ~~OWNER~~ ^{City and CP} desires that the building be raised, moved and lowered to the location on the property described in paragraph B above, hereinafter the ("**TRACT**"); and
- D. ~~OWNER~~ ^{City and CP} hereby confirms and covenants that ~~OWNER~~ ^{City and CP} has the right to place the Building on the TRACT.

NOW THEREFORE, in consideration of the covenants contained herein, ~~OWNER~~ ^{CP} and **MOVER** agree as follows:

1. **MOVER** agrees to raise, move and lower the Building from the present location to the TRACT for the sum of \$4591.85 including excise tax. This sum shall be paid to the **MOVER** as follows:

- a. \$459.18 upon return of contract for preparation of the move (utilities, permits, etc.)
- b. \$4132.67 upon completion of move and lowering.

2. ~~OWNER~~ ^{CP} shall disconnect all skirting, plumbing and electrical connections as well as gas and air conditioning so as to permit the raising and free moving of the Building and shall clear all trees and other obstacles to movement, including basement partitions. Any decks, or additions that must be removed shall be removed by the ~~OWNER~~ ^{CP}. The furnace and water heater are the responsibility of the ~~OWNER~~ ^{CP} to move unless otherwise agreed upon. If **MOVER** is required to complete any of the work stated above in this section 2. **MOVER** will charge **OWNER** \$400.00 per hour over and above all other charges contemplated in this Agreement.

3. **MOVER** shall secure all required clearances from property owners, government, utility, and communication authorities, collectively hereinafter referred to as ("**Authorities or Authority**"). Estimates will be provided by **MOVER** to ~~OWNER~~ ^{CP} which have been furnished to **MOVER** by each

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Authority. MOVER does not guarantee the accuracy or completeness of those estimates and is not liable for any additional expenses resulting from the accuracy, inaccuracy or completeness of those estimates.

4. In addition to MOVER's raising, moving and/or lowering expenses, ^{CP} ~~OWNER~~ will pay all costs and fees relating to the clearances obtained as stated in section 3 above and for all costs and fees relating to the raising, lowering and/or disconnecting of electrical power, TV, cable, and communication lines. All actual costs incurred by the MOVER from the Authorities shall include a 15% MOVER's administrative, coordination and handling fee, collectively hereinafter referred to as ("Administrative Fee") for the cost borne by each such Authority not to exceed \$200.00 for each Authority's total actual expense; however, in no case shall the Administrative Fee be lower than \$30.00 for each Authority's total expense. Any expenses from any Authority or Authorities billed directly to ~~OWNER~~ ^{CP or City} but for which MOVER has provided the service of securing clearances, permits and coordinating any activity related to the raising, moving and/or lowering of the Building shall also be subject to the Administrative Fee.

5. ^{CP} ~~OWNER~~ shall provide an adequate foundation, basement, footings, or blocks, with beam openings as may be designed by MOVER upon which the Building is to rest on the TRACT. ^{CP} ~~OWNER~~ shall complete the foundation, basement, footings, or blocks within twenty (20) business days from the date as set forth by the MOVER. If the OWNER has not completed the foundation, basement, footings, or blocks within twenty (20) business days from the date as set forth by the MOVER, a charge of \$250.00 per day will be applied for equipment rental thereafter.

6. ^{CP} ~~OWNER~~ shall remove all contents of the basements, barns and garages prior to the move.

7. ^{CP} ~~OWNER~~ acknowledges that the raising, moving and lowering of a building will cause stress to a building, especially an old building or a building with deteriorated or defective sills, beams or other underpinnings. MOVER will attempt to minimize the stress, but MOVER makes no guarantee or representation that the stress that does occur will not cause damage.

^{CP, but not City,} ~~OWNER~~ agrees to indemnify and save MOVER harmless and free from any claim of damage, loss or any liability of any kind or nature whatsoever for which the MOVER is not insured (including deductibles) including, but not limited to, the Building, any loss of use of the Building, other property attached to the Building, or any contents in the building owned by ~~OWNER~~ ^{City or CP} and other consequential damages, arising out of or in any manner connected with any acts of the MOVER, his agents, servants, or employees, while in and upon any premise, while moving any Building or other property of the ~~OWNER~~ ^{CP}, regardless of the manner in which the same may happen or occur except that MOVER shall not be indemnified by ~~OWNER~~ ^{CP} for any of MOVER's equipment, moving materials or tools. ~~OWNER~~ shall not be responsible for any cost of the insurance deductible in the event the loss and/or damage is caused by MOVER's negligence, acts of omissions or is caused by MOVER's equipment, moving materials or tools. It is further understood that this indemnity includes and is intended to cover any claims of damage by third persons, parties, fire, flood, or any acts of God. The indemnification and hold harmless section of this Agreement is intended to induce the MOVER to enter into this Agreement.

Notwithstanding the foregoing two paragraphs in this section 7., ^{CP and City} ~~OWNER~~ understands that the Building is insured by the MOVER for the shorter of the following: i.) from the period of time when MOVER first begins to perform any physical act necessary to prepare the building, house, structure, or

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other cargo for the move to the completion of the move; or ii.) Sixty (60) continuous calendar days after MOVER first begins the physical acts described in item 1 above.

^{CP}
8. ~~OWNER~~ understands and acknowledges the following:

- a. Insurance will or has been procured by MOVER through McGuire Agency and the certificate of insurance is marked as Exhibit "A", attached hereto and made a part hereof.
- b. Any Building purchased by the ^{CP}~~OWNER~~ within the previous twelve (12) months from the date of this Agreement will be insured for no more than the purchase price plus the moving costs as outlined in Section 1 of this Agreement.
- c. The Insurance policy retained by MOVER has a \$1,000.00 deductible clause.
- d. Cracking is not covered by insurance unless the cracking occurs as a result of violent and/or forceful handling of the Building by the MOVER during the raising, moving and/or lowering.

9. This Agreement will become null and void if not signed and returned with deposit within 60 days from date of this Agreement.

^{CP, City} 10. This Agreement binds the heirs, administrators, executors, successors or assignees of ~~OWNER~~ and MOVER.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Northland Building Movers, Inc.
MOVER

The Journey Museum
OWNER

By: *Jessie Schaefer*

By: _____



CERTIFICATE OF LIABILITY INSURANCE

PW041012-21
 02/10/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Maguire Agency 1935 West County Road B-2, #241 Roseville MN 55113 Phone: 651-638-9100 Fax: 651-638-9762	CONTACT NAME PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ PRODUCER CUSTOMER ID NO: NORT-04 INSURER(S) AFFORDING COVERAGE: _____ A/C # _____ INSURER A: <u>Travelers Insurance Company</u> INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____
INSURED Northland Building Movers, Inc 32303 - 112th Street Soreka, SD 57437	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS LTR	TYPE OF INSURANCE	ADOL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		660-1679L717	06/01/11	06/01/12	EACH OCCURRENCE: \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE): \$ 100,000 MED EXP (Any one person): \$ 5,000 PERSONAL & ADV INJURY: \$ 1,000,000 GENERAL AGGREGATE: \$ 2,000,000 PRODUCTS - COMP/OP AGG: \$ 2,000,000
	CLAIM-MADE <input checked="" type="checkbox"/> OCCUR					
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT LOC					
A	<input checked="" type="checkbox"/> ANY AUTO		HA-3905C665	06/17/11	06/17/12	COMBINED SINGLE LIMIT* (Per occurrence): \$ BODILY INJURY (Per person): \$ BODILY INJURY (Per accident): \$ PROPERTY DAMAGE (Per occurrence): \$ \$ \$ \$
	ALL OWNED AUTOS					
	SCHEDULED AUTOS					
	<input checked="" type="checkbox"/> HIRED AUTOS					
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	UMBRELLA LIAB	OCUR				EACH OCCURRENCE: \$
	EXCESS LIAB	CLAIM MADE				AGGREGATE: \$
	DEDUCTIBLE					\$
	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTHER \$ \$ \$ \$ \$ \$
	ANY PROPRIETOR/PARTNER/PARTICIPLE OFFICER/MEMBER EXCLUDED? (Mandatory in SD)	Y/N	N/A			
	DESCRIPTION OF OPERATIONS below					
A	Cargo		660-1679L717	06/01/11	06/01/12	ACV up to \$125,000 \$1,000 Ded.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101 Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER JOURN02 The Journey Museum Raymond Summers 222 New York St Rapid City SD 57701	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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