

AGREEMENT BETWEEN  
THE CITY OF RAPID CITY AND  
THE BLACK HILLS WAR MONUMENT ASSOCIATION

This agreement is by and between the City of Rapid City (“City”), a municipal corporation organized under the laws of the state of South Dakota, of 300 Sixth Street, Rapid City, SD 57701, and Black Hills War Monument Association (“BHWMA” or “Association”), a South Dakota domestic non-profit corporation, of 1601 Campbell Street, Rapid City, SD 57701.

1. Purpose of the Agreement. The purpose of this agreement is to outline the responsibilities of the parties regarding a war monument in Memorial Park, approximately 350 feet north of the intersection of 6th Street and Omaha Street, in Rapid City, South Dakota, as more fully described in Exhibit “A”.

2. Funding and Construction. BHWMA shall be responsible for all costs associated with the construction and installation of the memorial.

3. Ongoing Care and Maintenance. BHWMA shall be responsible for the ongoing care of the six military service flags and flagpoles on the monument site in addition to the United States flag, the South Dakota state flag, and a Prisoner of War Missing in Action (POW-MIA) flag attached to the lanyard on the large US flagpole. This maintenance and care includes replacing the flags periodically due to wear and tear or routine maintenance if they need to be cleaned.

BHWMA shall also be responsible for the ongoing care and repair to any of the six granite Walls of Honor, the granite tablets, and the six military flagpoles. In the event any of the monument structures or site is damaged due to vandalism or other criminal activity, BHWMA and the City shall work in cooperation with one another to seek reimbursement of actual damages done, if criminal charges are brought.

4. City Responsibilities. City shall continue to care for all landscaping around the site, including weed control and removal, cutting the grass, and regular maintenance of the greenery at the immediate monument site. City shall continue to monitor for and remove any trash and/or litter around the site on a regular basis. City shall lower all flags to half-staff when required; BHWMA will provide an access key to the military flags to allow the City to lower the flags when needed.

5. Term. The term of this Agreement is for three (3) years beginning on October 1, 2022 and continuing through September 30, 2025.

6. Termination. Either party may terminate this Agreement for any reason. The party so terminating this Agreement must provide written notice of termination at least thirty (30) days prior to the date of termination.

7. Insurance and Indemnification. BHWMA shall furnish proof of general liability insurance in the minimum amount of \$1 million per occurrence and \$2 million aggregate. BHWMA agrees to indemnify and hold harmless the City against any claims, demands, and

causes of action arising out of the performance of the terms of this Agreement. Such insurance policies shall name City as an additional insured with respect to all activities arising out of the performance of this Agreement, and shall afford City thirty days written notice of cancellations or material change of coverage. BHWMA agrees to provide the City with a Certificate of Insurance confirming this coverage within thirty days of execution of this Agreement.

8. Notification to City of Damage. BHWMA agrees to promptly report any vandalism, unsafe conditions, or repair needs to the Parks Division Office as soon as is possible. BHWMA shall contact 911 Emergency to report any witnessed acts which violate City ordinance or park regulations. BHWMA agrees it will not respond in such a situation by contacting any offending individuals. BHWMA agrees to gather any appropriate information regarding such events and forward it to the Parks Division Office.

9. Relationship between the Parties. BHWMA is an independent contractor of the City. This Agreement does not create any employment relationship between City and the BHWMA or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between BHWMA and the City of Rapid City. No agent of BHWMA shall be the agent of the City, and BHWMA covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

10. Time of Essence. Time is of the essence of this Agreement.

11. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

12. Amendments. This Agreement may only be amended by a written agreement duly executed by all parties.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

14. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with the other signed counterparts, shall constitute one Agreement.

15. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

16. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

17. Choice of Law and Venue. This agreement shall be interpreted under the laws of the State of South Dakota. Any litigation arising from this Agreement shall be resolved in the circuit court, Seventh Judicial Circuit, Pennington County, South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF RAPID CITY

\_\_\_\_\_  
Steve, Allender, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Ainslie, Finance Director

On this the \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned officer, personally appeared Steve Allender and Daniel Ainslie, who acknowledged themselves to be the Mayor and Finance Director, respectively, of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Director.

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























(SEAL)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_





**Legend**

-  Permit Buffer
- Roads**
-  Interstate
-  US highway
-  SD highway
-  County highway
-  Main road
-  Minor arterial
-  Collector
-  Ramp
-  Paved road
-  Unpaved road
-  Trail
-  Driveway
-  Alley
-  Unimproved road
-  Airport Runway
-  Not yet coded
-  Section Lines 0-25k
-  Tax Parcels
- Lot Lines**
-  <Null>
-  Lot Line
-  Parcel Line

**Map Notes:**

Memorial Park

231.6 0 115.79 231.6 Feet

NAD\_1983\_StatePlane\_South\_Dakota\_South\_FIPS\_4002\_Feet  
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION