

**MEMORANDUM OF AGREEMENT
SUBMITTED TO THE ADVISORY COUNCIL
ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR 800.6(a)**

WHEREAS, the City of Randolph, Nebraska has determined that utilizing Community Development Block Grant funding for the construction of a new library in Randolph, Nebraska may have an adverse effect upon the Randolph Public Library (the Property), a property eligible for inclusion in the National Register of Historic Places and has consulted with the Nebraska State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the Northeast Nebraska Economic Development District have participated in the consultation and have been invited to concur in this Memorandum of Agreement; and

WHEREAS, the definitions and stipulations given in Appendix A and B are applicable throughout this Memorandum of Agreement, and are incorporated herein;

NOW, THEREFORE, the City of Randolph and the Nebraska SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties:

The City of Randolph shall ensure that the following stipulations are carried out:

Stipulations

- 1) The City shall document the Property in accordance with Appendix A (35 mm archival photographs, site and floor plans and an historical narrative).
- 2) If the City chooses to integrate the Property into the new library construction, the City shall design the new construction and any rehabilitation of the Property in accordance with the Secretary of the Interior's *Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.
 - a) The City shall provide the NESHPO plans and specifications for the project at preliminary, 50 percent and 90 percent design stages.
 - b) Plans and specifications must be, at minimum, for all exterior elevations and site plans for the new library, and all plans and specifications, including interiors spaces, for the rehabilitation of the historic Property.
 - c) NESHPO must review and approve all plans and specifications as enumerated at a) and b) above.
 - d) NESHPO shall provide written comments within 15 working days of receipt of complete plans and specifications as enumerated at a) through c) above. If the NESHPO does not respond within 15 working days, the project may proceed as planned.
- 3) If the City chooses to *not* integrate the Property into the new library construction, the City shall maintain the property in such a manner that the Property shall retain its marketability and historic integrity. At minimum, the City shall:
 - a) In consultation with the NESHPO, mothball the Property in accordance with the Secretary of the Interiors *Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings* and National Park Service Preservation Brief Number 31: *Mothballing Historic Buildings*. Minimally, efforts to mothball the building shall include:
 - 1) Repair of any existing roof leaks or gutter problems, and monitor the roof for leaks.
 - 2) Secure windows using shutters, plywood, metal grates or corrugated metal.
 - 3) In winter months, maintain sufficient heat to prevent pipe bursting.
- 4) Maintain frequent, periodic inspections of the Property.

- b) In consultation with the NESHPO, the City shall make a good-faith effort to find an adaptive re-use for the Property, and market the Property in accordance with the stipulations in Appendix B.
- 4) If the Property is at any time sold or otherwise transferred out of City ownership, the City will attach the preservation covenant at Appendix C to the title, deed or other transfer instrument.
- 5) If the Property has not been disposed after all stipulations above and those in Appendices A and B are satisfactorily fulfilled, the City shall attempt to market the property for twelve months without the covenant in accordance with the stipulations in Appendix B.
- 6) Pending final approval in writing by the SHPO, and upon the completion of stipulation 5 above, the City may dispose of the Property as they see fit.
- 7) If the Property is lost through fire, flood or other act of God, the City should so notify the SHPO and, after written approval from the SHPO, the stipulations of this MOA may be voided.
- 8) This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the City may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with Stipulation 11 below.
- 9) If potential historic properties are discovered or unanticipated effects on historic properties found, the City shall initiate consultation with the NESHPO pursuant to 36CFRPart 800.13
- 10) Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the City shall consult with the objecting party(ies) to resolve the objection. If the City determines, within 30 days, that such objection(s) cannot be resolved, the City will:
- a) Forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the City on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by the City in reaching a final decision regarding the dispute.
 - b) If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the City may render a decision regarding the dispute. In reaching its decision, the City will take into account all comments regarding the dispute from the parties to the MOA.
 - c) The City's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. The City will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The City's decision will be final.
- 11) If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation 12, below.
- 12) If this MOA is not amended following the consultation set out in Stipulation 11, it may be terminated by any signatory or invited signatory. Within 30 days following termination, the City shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by the City and Nebraska SHPO, the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to

City's approval of this undertaking, and implementation of its terms evidence that the City has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

NEBRASKA STATE HISTORIC PRESERVATION OFFICER

BY: Boschendorff Deputy DATE: 12/9/05

CITY OF RANDOLPH

BY: Neil Klum DATE: 12/19/05

Concur: NORTHEAST NEBRASKA DEVELOPMENT DISTRICT

BY: Patrick Erickson Director DATE: 12/16/05

APPENDIX A

Recordation Requirements for the Randolph Public Library

The following information shall be placed on all material: Nebraska Historic Buildings Survey site number CD12-03, Randolph Public Library and the Library's street address. Documentation shall include:

1. Mylar title sheet with a vicinity map of the building. The building's location shall be established with Universal Transverse Mercator (UTM) Grid system location data, derived from a 7.5 minute USGS quadrangle map. Identification of the USGS quadrangle; UTM coordinates; building name shall all be included in a title block immediately below the map;
2. A site plan on Mylar, scaled as 1"-10.0 feet. The site plan shall include the relationship of all primary landscape features (i.e. roads, sidewalks, etc.). Key all photos to the plan showing the point of view, direction of view, using the NeSHPO photo number of the photograph (see photo requirements below).
3. Photographs: The preparation of black-and-white, archivally stable negatives and prints will minimally be 35 mm format with original negatives and contact sheets provided to the NeSHPO. Negatives shall be properly placed in acid-free paper jackets. Each photograph shall be keyed to the site map. Contact sheet and prints shall be labeled in accordance with NESHPO standards (Nebraska Historic Buildings Survey manual, 2003) in consultation with the NeSHPO.

ALTERNATIVELY, digital photographs may be substituted in the following manner:

Electronic image files must be taken at 1600 x1200 pixels at 300 ppi (pixels per inch) or larger. Digital images must be saved in 8-bit or larger color format. The file name for each electronic image must be saved on CD-R media in a TIFF (Tagged Image File Format). Image file names must include, at minimum, the name of the property and the site number CD12-03. CD-Rs must be labeled with the name of the property, city, county, and CD12-03.

Photographic documentation, including electronic images, shall minimally include:

- a. List of photographs.
 - b. Views of all facades, including representative close ups.
 - c. Streetscape views of the general environs.
 - d. General views of the interior where historic fabric or historic conditions still exist (at the photographer's discretion).
4. Historic Overview
Provide a comprehensive historic overview (between 2 and 10 pages, as appropriate) of the property including construction date and data, architectural description, narrative history and historic context.

All material must be reviewed and accepted by the NeSHPO in writing.

APPENDIX B
Marketing Plan for the Randolph Public Library

The City of Randolph (City) agrees to market the historic Randolph Public Library (the Property) in the following manner:

- 1) Include photographs of the property sufficient to convey the property's visual characteristics;
- 2) Note the Property's dimensions and usable square footage;
- 3) Disclose that the Property is eligible for listing on the National Register of Historic Places;
- 4) Disclose the availability of federal historic preservation income tax credits for the rehabilitation of the Property;
- 5) Disclose the availability of Community Development Block Grant Funds, Rural Development funds or any other appropriate public or private funds or incentives available for development projects in Wakefield;
- 6) Describe the availability of technical and administrative support from the State Historic Preservation Office (SHPO) for any appropriate rehabilitation planned for the Property;
- 7) Disclose that a covenant protecting the features of the Property that make it eligible for the National Register will be attached to the deed or other instrument of title transfer;
- 8) Disclose the availability of State of Nebraska LB 66 benefits.

The City shall provide a portfolio containing all of the above information to the Realtor contracted for disposing of the property. Additionally, the City shall provide such information above to appropriate local and regional newspapers and "shoppers" as to make clear these stipulations. These outlets should be contracted to run the advertisements for the property as many times as possible, but no less than nine (9) times during the initial eighteen (18) months of marketing.

The SHPO will provide the City with appropriate information concerning federal and state preservation tax incentives, technical and administrative support potential from the SHPO and guidelines for rehabilitating historic buildings. These materials shall also be made available to the Realtor, and should be kept on file by the City.

The stipulations above shall be in force for a minimum of eighteen (18) months from the first day this marketing plan is publicized, or until the property is duly disposed. The City shall date, document and keep on file all efforts as stipulated above, and shall document and keep on file any and all offers for the property, and the reasons for their rejection or acceptance. The City shall, in good faith, market the Property as a viable development opportunity, and shall offer the Property at no more than market value as assessed by the County.

If, after eighteen months, no acceptable offers have been generated for the Property, and after giving notice to and in consultation with the SHPO, the City may market the Property as above with stipulation number seven (7) regarding the preservation covenant removed. The City shall market the Property for a minimum of twelve (12) months in this manner. All other stipulations and requirements, including documentation, shall remain in force. Marketing efforts through newspapers and shoppers as described above shall occur no less than six (6) times during this twelve (12) month period. After twelve months, if no acceptable offers have been generated, after notification to and consultation with the SHPO, the appropriate stipulations of this Memorandum of Agreement may be followed.

The SHPO reserves the right to monitor and/or verify the marketing efforts of the City and the Foundation at any time, provided at least 30 days notice is given.

APPENDIX C

PRESERVATION COVENANT for the Randolph Public Library

In consideration of the conveyance of certain [improved] real property, hereinafter referred to as the Property located in the Randolph, Cedar County, State of Nebraska, which is more fully described as:

[Insert legal description]

[Name of property recipient] hereby covenants on behalf of [himself/herself/itself], [his/her/its] heirs, successors and assigns at all items to [specify: Federal agency transferring the property, or SHPO, or other] to maintain and preserve [name all those exterior and interior features that qualify the property for inclusion in the National Register of Historic Places; these may be named within the body of the paragraph or included as an attachment] as follows:

1. [Name of recipient] shall preserve and maintain [name of property] in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (National Park Service, 1995) [or specify other relevant standard, management plan, archeological treatment plan, etc., with full citation] in order to preserve and enhance those qualities that make [name of property] eligible for inclusion in the National Register of Historic Places.
2. No [construction, alteration, remodeling/disturbance of the ground surface] or any other thing shall be undertaken or permitted to be undertaken on [name of property] which would affect the [structural] integrity or the [appearance/cultural use/archeological value] of [name of property] without the express prior written permission of [Federal agency transferring the property, or SHPO, or other] signed by a fully authorized representative thereof.
3. The [Federal agency transferring the property, or SHPO, or other] shall be permitted at all reasonable times to inspect [name of property] in order to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, [Federal agency transferring the property, or SHPO, or other] may, following reasonable notice to [name of recipient], institute suit to enjoin said violation or to require the restoration of [name of property]. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.
5. [Name of recipient] agrees that [Federal agency transferring the property, or SHPO, or other] may at its discretion, without prior notice to [name of recipient] convey and assign all or part of its rights and responsibilities contained herein to a third party.
6. This covenant is binding on [name of recipient] [his/her/its] heirs, successors and assigns [in perpetuity/for X years from the date of this instruction]. Restrictions, stipulations and covenants contained herein shall be inserted by [name of recipient] verbatim or by express reference in any deed or other legal instrument by which [he/she/it] divests [himself/herself/itself] of either the fee simple title or any other lesser estate in [name of property] or any part thereof.
7. The failure of [Federal agency transferring the property, or SHPO, or other] to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

The covenant shall be a binding servitude upon [name of property] and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that [name of recipient] agrees to be bound by the foregoing conditions and restrictions and to perform to obligations herein set forth.