

A G R E E M E N T

STATE OF SOUTH DAKOTA

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF
OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL
SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-
AID PRIMARY SYSTEM

THIS AGREEMENT made and entered into this 1st day of
November _____, 1979, by and between the United States
of America represented by the Secretary of Transportation acting
by and through the Federal Highway Administrator, hereinafter re-
ferred to as the "Administrator," and the State of South Dakota,
acting by and through its State Department of Transportation,
hereinafter referred to as the "State."

Witnesseth:

WHEREAS, Congress has declared that Outdoor Adver-
tising in areas adjacent to the Interstate and
Federal-aid primary systems should be controlled in
order to protect the public investment in such high-
ways, to promote the safety and recreational value
of public travel and to preserve natural beauty; and

WHEREAS, Section 131(d) of Title 23, United States
Code, authorizes the Secretary of Transportation to
enter into agreements with the several States to de-
termine the size, lighting, and spacing of signs,
displays, and devices, consistent with customary use,

which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid primary systems which are zoned industrial or commercial under authority of State law or in unzoned commercial or industrial areas, also to be determined by agreement; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel, and to preserve natural beauty; and

WHEREAS, Section 131(b) of Title 23, United States Code, provides that Federal-aid highway funds apportioned to any State which has not made provision for the effective control of outdoor advertising, as defined in Section 131(c) of Title 23, United States Code, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under Section 104 of Title 23, United States Code, until such time as such State shall provide for such effective control, and

WHEREAS, the State of South Dakota desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and the national policy in order to remain eligible to receive the full amount of all Federal-aid highway funds to be apportioned to such State under Section 104 of Title 23, United States Code; and

NOW, THEREFORE, the parties hereto do mutually agree as follows:

Section I.

1. Definitions

A. Act means Title I of the Highway

Beautification Act of 1965, P.L. 89-285, October 22, 1965, 79 Stat. 1028, as amended, Section 131 of Title 23, United States Code.

- B. Commercial or industrial activities for purposes of unzoned commercial or industrial areas mean those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:
1. Outdoor Advertising structures.
 2. Agricultural, forestry, ranching, grazing, farming, and related activities, including

but not limited to, wayside
fresh produce stands.

3. Transient or temporary activities.
4. Activities not visible from the main-traveled way.
5. Activities more than 660 feet from the nearest edge of the right-of-way.
6. Activities conducted in a building principally used as a residence.
7. Railroad tracks and minor sidings.

C. Zoned Commercial or Industrial areas mean

those areas which are zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation.

D. Unzoned commercial or industrial areas

mean the areas adjacent to an Interstate or primary highway within the State which are not zoned by State or local law, regulation, or ordinance, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 1,000 feet from and beyond the edge of

each side of such activity. Each side of the highway will be considered separately in applying this definition.

All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing, and landscaped areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of pavement of the highway. The cessation of the commercial or industrial activity shall terminate the designation of an area as an "unzoned commercial or industrial area" after 6 months, at which time outdoor advertising therein shall become nonconforming.

- E. National System of Interstate and Defense Highways and Interstate System means the system presently defined in and designated pursuant to Section 103 of Title 23, United States Code.
- F. Federal-aid primary highway means any highway within that portion of the State highway system as designated, or as may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.

- G. Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.
- H. Main-Traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposition directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
- I. Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the Interstate or Federal-aid primary highway systems.
- J. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising

message or normal maintenance or repair
of a sign structure.

K. Maintain means to allow to exist.

L. Rest and recreation area or safety rest area
means an area or site established and main-
tained within or adjacent to the highway
right-of-way by or under public supervision
or control, for the convenience of the
traveling public.

M. Visible means that the advertising copy or
informative contents are capable of being
seen without visual aid by a person of normal
visual acuity.

N. Municipality means all cities and towns
organized under the law of this State but shall
not include any other political subdivision.

O. Urban area means as defined by Section 101 of
Title 23, United States Code.

Section II. Scope of Agreement

This agreement shall apply to all zoned and unzoned commercial
and industrial areas within 660 feet of the nearest edge of
the right-of-way of all portions of the Interstate and
primary systems within the State of South Dakota in which
outdoor advertising signs may be visible from the
main-traveled way of either or both of said systems.

Section III. State Control

The State hereby agrees that, in all areas within the scope of this agreement, the State shall effectively control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to July 1, 1979, other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon, in accordance with the following criteria:

- A. In zoned commercial and industrial areas, the State may notify the Administrator that there has been established by local authority regulations which govern the size, lighting, and spacing of outdoor advertising signs in such areas, consistent with intent of the Highway Beautification Act of 1965 and with customary use. In such areas the size, lighting, and spacing requirements established by local authority will apply in lieu of the criteria set forth below.
- B. In all other zoned and unzoned commercial and industrial areas, the criteria set forth below shall apply.

Size of Signs

- 1. The maximum area for any one sign shall be 1,200 square feet with a maximum height of

30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron and supports.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.
3. The maximum size limitations shall apply to each side of a sign structure; and signs may be placed back-to-back, side-by-side, or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

SPACING OF SIGNS

1. Interstate and Federal-aid Primary Highways.
 - a. Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.
2. Interstate Highways and controlled access highways on the Federal-aid primary system.
 - a. No two structures shall be spaced less than 500 feet apart.

- b. Outside of municipalities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet to be measured along the Interstate or controlled access highway from the beginning or ending of pavement widening at exit from or entrance to the main-traveled way.
- 3. Nonlimited access Federal-aid primary highways.
 - a. Outside of municipalities - no two structures shall be spaced less than 300 feet apart.
 - b. Within municipalities - no two structures shall be spaced less than 100 feet apart.
- 4. The above spacing-between-structures provisions do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.
- 5. Explanatory Notes
 - a. Official and "on-premise" signs, as defined in Section 131(c) of Title 23, United States Code, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

- b. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway. Double-faced, back-to-back, and V-type signs shall be considered as a single sign structure for purpose of these usages.

LIGHTING

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light(s) are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or Federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

4. All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the State.

At any time that a bona fide county or local zoning authority adopts regulations which include the size, lighting, and spacing of outdoor advertising, the State may so notify the Administrator and control of outdoor advertising in the commercial or industrial zones within the geographical jurisdiction of said authority will transfer to subsection A of this section.

Section IV. Interpretation

The provisions contained herein shall constitute the standards for effective control of signs, displays, and devices within the scope of this agreement.

The provisions contained herein pertaining to the size, lighting, and spacing of outdoor advertising signs permitted in zoned and unzoned commercial and industrial areas shall apply only to those signs erected subsequent to July 1, 1979.

In addition, the State will prepare an inventory of signs erected after March 31, 1979, and prior to July 1, 1979, and compare the inventory to the provision pertaining to size, lighting, and spacing of outdoor advertising signs permitted

in zoned or unzoned commercial and industrial areas in the State outdoor advertising control law which became effective July 1, 1979. However, consistent with the Secretary's Order of Compliance dated November 29, 1979, the State will assume responsibility for removal of any signs erected in zoned or unzoned commercial and industrial areas between March 31, 1979, and July 1, 1979, which do not meet the standards contained in the State's outdoor advertising control law.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress or the State legislation is amended, the parties reserve the right to renegotiate this agreement or to modify it to conform with any amendment.

Section V. Effective Date

This Agreement shall have an effective date of November 29, 1979.
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of November 1, 1979.

State of South Dakota, acting by and through its State
Department of Transportation:

By: 
Eugene L. Rowen
Acting Secretary of Transportation

United States of America
Department of Transportation

By: 
Federal Highway Administrator