

**PROPERTY TRANSFER
BETWEEN
STATE OF SOUTH DAKOTA
AND
CITY OF BROOKINGS, SOUTH DAKOTA**

This Agreement is between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the city of Brookings, South Dakota, referred to in this Agreement as the "CITY."

1. PURPOSE AND BACKGROUND

The purpose of this Agreement is to transfer certain property from the STATE to the CITY.

2. HIGHWAY PROPERTY FOR WHICH OWNERSHIP IS TO BE TRANSFERRED

- A. If approved by the South Dakota Transportation Commission, the STATE will transfer to the CITY by quit claim deed all of the STATE'S ownership interests in the property identified below to the CITY.

Transfer Parcel: The portion of South Dakota Brookings Shop site to be transferred to the CITY will be referred to in this Agreement as the "Parcel." The Parcel is shown in **Exhibit A**, attached to and made a part of this Agreement

- B. The STATE will transfer the Parcel to the CITY as shown in **Exhibit A** and identified as follows:

Lot A in Lot 1 in the Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) of Section 18, Township 110 North, range 49 West of the 5th P.M., Brookings County, South Dakota.

- C. The CITY will provide the STATE with a true and correct copy of the resolution of the CITY'S governing body authorizing the CITY to accept ownership of the Parcel. A copy of the resolution from the CITY accepting ownership of the Parcel is attached to this Agreement as **Exhibit B**.

3. THE STATE AGREES TO THE FOLLOWING:

- A. The STATE will transfer the Parcel to the CITY upon full execution of this Agreement. The STATE will begin preparation of the documents necessary to convey ownership of the Parcel to the CITY upon full execution of this Agreement.
- B. The STATE will not be responsible for any current or future improvements, maintenance, repairs, or other costs or fees pertaining to the above-described Parcel and its street frontage.

4. THE CITY AGREES TO THE FOLLOWING:

- A. The CITY will accept the Parcel upon full execution of this Agreement. The CITY will accept ownership of the Parcel upon delivery by the STATE to the CITY of the necessary documents of conveyance.
- B. The CITY will not assess any fees or costs to the STATE for any current or future improvements, maintenance, repairs, or street frontage needed for the above-described Parcel. Accordingly, the CITY will be responsible for any and all current or future improvements, maintenance, repairs, and other costs pertaining to the above-described Parcel and its street frontage.

5. CONVEYANCE

The deed from the STATE to the CITY will include the following provisions:

Grantee further understands and accepts the Real Property in an "AS IS, WHERE IS" condition and subject to all faults of every kind and nature whatsoever, whether latent or patent and whether now or hereafter existing. Grantor will not be obligated to do any restoration, repairs, removal, remediation, monitoring, or other work in connection with the Real Property, and Grantor will not be liable for any restoration, repairs, removal, remediation, monitoring, or other work necessary to cause the Real Property to meet any applicable laws, ordinances, requirements, limitations, restrictions, rules, regulations, or codes, or be suitable for any particular use. Grantee will indemnify Grantor against any liability, claims, suits, actions, damages, penalties, fines, costs, and expenses, including attorneys' and consultants' fees, incurred or arising directly or indirectly from or in connection with any such restoration, repairs, removal, remediation, monitoring, or other work, including injury to, death of, loss of, or damage to property of Grantee or any third party. Grantee specifically assumes the risk that hazardous substances and contaminants may be present on the property, and indemnifies, holds harmless, and hereby waives, releases, and discharges forever the Grantor from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties, and judgments arising from or in any way related to the condition of the property or presence of any hazardous substances or contaminants in, on, or under the Real Property. This indemnity specifically includes the obligation of Grantee to remove, close, remediate, reimburse, or take other actions requested or required by any governmental agency concerning any hazardous substances or contaminants on the Real Property.

This Deed does not carry with it any implied covenants whatsoever, including any covenant that Grantor has good right to convey any interest in the Real Property to Grantee. Grantee understands and accepts the Real Property subject to all encumbrances, covenants, conditions, and restrictions, whether of record or not.

The provisions of this deed will be covenants running with the land binding upon and inuring to the benefit of Grantor and Grantee and their respective successors and assigns.

6. VISUAL INSPECTION.

The CITY has made a complete visual inspection of the subject real property and has knowledge as to the past uses of the subject real property. Based upon this inspection and knowledge, the CITY is aware of the condition of the subject real property and the CITY specifically acknowledges that the CITY is receiving the subject real property in an "as-is with all faults" basis. The CITY is not relying on any representation or warranties of any kind whatsoever from the STATE as to any matters concerning the subject real property, including the physical condition of the subject real property or any defects, the presence of any hazardous substances, wastes, contaminants in, on, or under the subject real property, the condition or existence of any of the above ground or underground structures or improvements in, on, or under the subject real property, the condition, of title to the subject real property, or any leases, easements, or other agreements affecting the property. The CITY assumes the risk that hazardous substances and contaminants may be present on the subject real property, and indemnifies, and waives, releases, and discharges forever the STATE from any and all present or future claims or demands, and any and all damages, loss, injury, claims, or costs, including fines, penalties, and judgments arising from or in any way related to the condition of the subject real property or presence of any hazardous substances or contaminants in, on, or under the property. The CITY'S indemnification specifically includes the obligation of the CITY to remove, close, remediate, reimburse, or take other actions requested or required of the STATE by any governmental agency concerning any hazardous substances or contaminants on the property.

7. NATURAL RESOURCES

The STATE reserves all rights to all deposits of coal, ores, metals, and other minerals, asphaltum, oil, gas, and other like substance, together with the right to prospect for, mine, and remove the same upon rendering compensation to the owner or lessee for all damages that may be caused by such prospecting or removal, together with the right of access at all times to exercise said right. The deed from the STATE to the CITY will contain the following provision:

It is expressly understood that the Grantor reserves all rights to all deposits of coal, ores, metals, and other minerals, asphaltum, oil, gas, and other like substance, together with the right to prospect for, mine, and remove the same upon rendering compensation to the owner or lessee for all damages that may be caused by such prospecting or removal.

8. INDEMNIFICATION

The CITY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of the CITY'S performance under this Agreement. This section does not require the CITY to be responsible for or defend against claims or damages arising solely from errors or omissions of the STATE, its officers, agents, or employees.

4. MISCELLANEOUS

- A. The STATE makes no representations or warranties of title for any of the property to be conveyed pursuant to this Agreement.
- B. This Agreement will be effective as of date of last signature.
- C. The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission or Council minutes or resolution authorizing the execution of this Agreement by the Mayor as the CITY'S authorized representative is attached hereto as **Exhibit C**.

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE and the CITY to enter into same.

City of Brookings, South Dakota	State of South Dakota Department of Transportation
By: _____	By: _____
Its: Mayor	Its: Interim Secretary
Date: _____	Date: _____
Attest:	Approved as to Form:
_____ City Auditor/Clerk	_____ Special Assistant Attorney General
[CITY SEAL]	