

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF BROOKINGS, SOUTH DAKOTA

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this MOU as the "STATE," and the city of Brookings, South Dakota, referred to in this MOU as the "CITY."

BACKGROUND:

1. The CITY wants to build a new interchange at Interstate 29 (I-29) and 20th Street South, referred to in this MOU as the "PROJECT."
2. The PROJECT will be added into the Statewide Transportation Improvement Program and given project number EM 0295(45)130 and PCN 020V.
3. The CITY has been awarded a federal "Better Utilizing Investments to Leverage Development (BUILD) grant, referred to in this MOU as the "GRANT," in the amount of Eighteen Million Six Hundred Seventy-seven Thousand Six Hundred Thirty Dollars (\$18,677,630.00) towards the total PROJECT cost.
4. The total PROJECT cost is estimated to be Twenty-three Million Three Hundred Forty-seven Thousand Thirty-seven Dollars (\$23,347,037.00).
5. The CITY, in combination with Brookings County and private development partners, have committed local match in the amount of Four Million Six Hundred Sixty-nine Thousand Four Hundred Seven Dollars (\$4,669,407.00) for the PROJECT.
6. The BUILD GRANT funds must be obligated by September 15<sup>th</sup>, 2021.
7. The BUILD GRANT funds must be expended by September 30<sup>th</sup>, 2026.
8. The CITY is requesting the STATE to assume administration responsibilities for the PROJECT.

THE STATE AND THE CITY MUTUALLY AGREE AS FOLLOWS:

A. THE STATE'S RESPONSIBILITIES

1. The STATE will function as the administrator for the PROJECT along with the Federal Highway Administration (FHWA).
2. The STATE will bill the CITY for any required local match associated with expenditures of the PROJECT.
3. The STATE will bill the CITY for any costs in excess of the total estimated cost of the PROJECT.
4. The STATE will bill the CITY for any costs deemed ineligible for GRANT funding by the STATE or FHWA.
5. The STATE will provide the following:
  - a. Project agreements authorizing federal funding through FHWA;
  - b. Technical assistance to the CITY for the PROJECT;
  - c. Geotechnical recommendations;
  - d. Surfacing recommendations;
  - e. Plans Specifications and Estimate (PS&E) review, letting, and construction administration;
  - f. A more detailed agreement for the PROJECT prior to PS&E approval; and
  - g. Coordination on the development of a GRANT agreement with FHWA.
6. Upon completion of the PROJECT, it is the intent that the STATE will assume jurisdiction, ownership, replacement, repair, and maintenance responsibilities for all portions of the PROJECT within the control of access.

B. THE CITY'S RESPONSIBILITIES

1. The CITY will be responsible for all local match requirements for the PROJECT.
2. The CITY will coordinate all match and reimbursements with other partners as identified in BACKGROUND Paragraph 4 above.
3. The CITY will be responsible for any costs determined ineligible for GRANT funding by the STATE or FHWA.
4. The CITY will be responsible for any costs in excess of the estimated PROJECT costs.
5. The City Engineer will function and assume all duties as the Project Manager (PM) for the PROJECT.

6. The PM will:
  - a. Adhere to the design criteria required by the STATE and FHWA.
  - b. Assume the responsibilities of Project Management as identified in Chapter 2 of the South Dakota Road Design Manual and any updates to the chapter.
  - c. Be responsible for review and approval of all billings for the PROJECT, with the exception of billings related to construction of the PROJECT.
  - d. Be responsible for development of all documents and activities including but not limited to, design, plans preparation, utility coordination, Right-of-Way acquisition (and related activities), and environmental clearances related to preliminary engineering services in accordance with STATE and FHWA requirements.

#### C. PROJECT LETTING

The STATE plans to let the PROJECT by September 15, 2021. In order to meet this letting deadline, it is imperative that the CITY promptly provide plans and related documents for the PROJECT to the STATE. Time is of the essence. The CITY must provide PROJECT deliverables and related documents to the STATE by the following deadlines:

June 30, 2020	The CITY will submit PROJECT preliminary Gradeline plans.
August 12, 2020	The CITY will conduct the Preliminary Design Inspection including Type Size and Location (TS&L) for any structures.
October 23, 2020	The CITY will conduct the Final Design Inspection.
December 16, 2020	The CITY will provide a Release to Right-of-Way.
February 9, 2021	The CITY will release final plans for review to the STATE.
June 15, 2021	The CITY will provide all certifications, final plans, right-of-way certifications, environmental clearances, utility certifications, and necessary state and federal PROJECT documentation.

#### D. GENERAL CONDITIONS:

1. This MOU may not be amended, except in writing, which writing will be expressly identified as a part of this MOU and be signed by an authorized representative of each of the parties.
2. If the CITY breaches any of the terms or conditions of this MOU, the STATE may terminate this MOU at any time with or without notice. If the STATE terminates the MOU, the CITY will be responsible for reimbursing the STATE for all PROJECT costs paid for with GRANT funds and all PROJECT costs incurred by the STATE in meeting its responsibilities under this Agreement, including labor costs and expenses for STATE staff.
3. This MOU depends upon the continued availability of appropriated funds and expenditure authority from the Legislature and the continued availability of the GRANT funds from the federal government. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or any funds become unavailable by operation of law or federal funds reductions or denials, the MOU may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
4. The CITY has designated its City Manager as the CITY'S authorized representative and has empowered the City Manager with the authority to sign this MOU on behalf of the CITY. A copy of the CITY'S Council minutes or resolution authorizing the execution of this MOU by the City Manager as the CITY'S authorized representative is attached to this MOU as Exhibit A.

5. Any notices or submissions required under this MOU will be provided to the following:

For the CITY  
Jackie Lanning  
City Engineer  
Suite 140  
Brookings, SD 57006

For the STATE  
Scott Rabern  
Chief Road Design Engineer  
South Dakota Department of Transportation  
700 East Broadway  
Pierre, SD 57501

SIGNATURE PAGE FOLLOWS

This MOU 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 the same.

City of Brookings, South Dakota

State of South Dakota  
Department of Transportation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: City Manager

Its: Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Approved as to Form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Special Assistant Attorney General

(CITY SEAL)