

REAL ESTATE SALE ACQUISITION AGREEMENT

THIS REAL ESTATE ACQUISITION AGREEMENT is made and executed by and between the City of Brookings, South Dakota, (hereinafter referred to as the "City"), and Prairie Meadow, Inc., Mike McClemans and Kathy McClemans, (hereinafter referred to as "McClemans").

WITNESSETH:

WHEREAS, the City desires to acquire the real property described below and McClemans agree to convey to the City, pursuant to the terms and conditions of this Real Estate Acquisition Agreement, the real estate described below.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES HERETO MUTUALLY AGREE TO THE FOREGOING AND AS FOLLOWS:

1. Acquisition of Real Property. McClemans hereby agree to convey to the City and the City hereby agrees to acquire from McClemans the following described real property:

Approximately 3.48 Acres in the Southeast ¼ of the McClemans Addition to the City of Brookings, County of Brookings, State of South Dakota as shown on the attached Exhibit "A". The exact acres and boundaries shall be determined upon the property survey and platting of the parcel, with the McClemans being allowed final approval of the legal description of the land to be conveyed to the City after the property survey and proposed plat are complete.

2. Effective Date. This Real Estate Acquisition Agreement is effective upon its execution by all parties.

3. Purchase Price. The City will acquire the above-described property from McClemans in consideration for the mutual promises contained in this Agreement.

4. Merchantable Title/Real Estate Closing Documents and Miscellaneous. McClemans will convey the property free of liens and mortgages, but the property may be subject to easements, rights of way and restrictions of record. McClemans will provide clear and marketable title to the City concerning the above described real property, by Warranty Deed, which contains only easements, rights of way and restrictions of record.

In addition, the City and McClemans, as the case may be, will also perform the following:

A. Title Insurance Policy. The City will order a Title Insurance Commitment, which shows McClemans have marketable and merchantable title to the real

property which is the subject of this Agreement. At the time of Closing, the City will pay the entire cost of the Title Insurance Policy.

B. **Deed Preparation/Closing Service Fees.** The City Attorney for the City will prepare the Warranty Deed and a Certificate of Real Estate Value required for this transaction at no expense to McClemans at the time of Closing.

C. **Transfer Fee/Recording Fee/Real Estate Taxes.**

1. This transaction is exempt from transfer fees.
2. The City will pay the recording fee for the Warranty Deed.
3. The McClemans will pay the 2019 Real Estate Taxes. The 2020 Real Estate Taxes shall be prorated to the date of Closing, with McClemans paying the pro-rated share prior to the date of Closing. Because the property will be owned by the City of Brookings, which is a political subdivision, the property will be exempt from real property taxes from and after the date of Closing.

D. **Closing/Possession/Insurance.** The Closing date will be scheduled at the earliest convenience of the parties at such time as all contingencies have been satisfied or waived, with title to be given to the City at the time of Closing. McClemans agree to maintain all existing insurance coverage on the property until the time of Closing. It is understood and agreed that the City will not take possession of the property until title has transferred.

E. **No Personal Property Included in this Agreement.** No personal property is included in the sale of the above-described real estate.

F. **Current Use of Premises/Leases.** McClemans acknowledge there are no current leases of the above-described property.

G. **Surveys and Tests.** The City, its employees, agents and contractors will have the right to enter upon the above-described real property to perform such soil tests and surveys upon execution of this Agreement which the City deems necessary, provided the City's representatives do not interfere with McClemans' use of the property.

5. **Additional Specific Terms and Obligations of the Parties.**

- (a) The City agrees to pay for platting costs of the parcel referred to in this Agreement being transferred to the City and any land that is not currently platted that is adjacent to the land conveyed in this Agreement that will remain in the possession of the McClemans, and to provide the plats to the Planning Commission and City Council for proper approval prior to filing of said plats and transfer of the above-described property.

- (b) The City agrees that the McClemans will retain possession of any dirt removed from the earthen channel. The City may place the dirt in the space provided by McClemans, which is south of Lot 309, west of Lot 312 and 412 on the west side of the road, provided the space provided is not in a jurisdictional wetland.
- (c) The City agrees to waive all assessments that the McClemans would otherwise be responsible to pay for the 15th Street South and 7th Avenue South project, including, but not limited to, water, sewer, drainage and road construction assessments.
- (d) The City agrees to pay for additional topographic surveying and engineering costs to design an earthen channel in the approximate locations shown on the attached Exhibit. If permitted by the Army Corps of Engineers, the City agrees to construct an earthen channel from 15th Street South to the north entrance of the McClemans Addition detention pond. The City further agrees to apply for a permit from the Army Corps of Engineers and any other required agency to construct the earthen channel.
- (e) The City will excavate an earthen forebay silt collection facility on the above described real property transferred to the City within 50 feet of the property line between the property transferred to the City and the McClemans Addition detention pond, which is located south of the earthen channel shown on the attached Exhibit. After Closing, the City will maintain the forebay silt collection facility after its installation and the earthen channel so both the facility and channel function for their intended purposes.
- (f) If all Contingencies described in Paragraph 6 below are satisfied, the City and the McClemans agree to the following deadlines: The City agrees to submit any applications for 404 permits within six (6) months of the latter of the expiration date of any referendum period if there is no referendum, or the date following the election canvassing if there is a referendum election, and the acquisition is approved at a referendum election. Since it is the intention of the City to construct the earthen channel and street as a single-bid project, the City further agrees to finance the project as determined by the project bid prices. The City further agrees to complete all drainage work, including installation of the forebay silt collection facility, on the conveyed property within two years (2) of the receipt of the Army Corps of Engineers approval of the earthen channel. The City also agrees to complete the road project at 15th Street South and 7th Avenue South within two (2) years of the receipt of the Army Corps of Engineers approval of the earthen channel.

The parties also acknowledge that the authorization and time frame of construction of the earthen channel shall be contingent upon approval by the Army Corps of Engineers, and approval of a budget amendment by the Brookings City Council for the corresponding financing of the project.

6. Contingencies. The obligation of the City to acquire the above-described property pursuant to this Agreement is contingent upon the following:

- (a) That McClemans provide clear and marketable title to the City concerning the above described real property, by Warranty Deed, which contains only easements, rights of way and reservations of record.

If there are any title restrictions, defects or burdens to which the City objects, other than easements, rights of way and restrictions of record, such objection will be stated in writing to McClemans, and McClemans will be allowed a reasonable time of not less than sixty (60) days in which to correct the same, and the Closing date will be delayed for not less than sixty (60) days to provide McClemans with time to correct said defect.

- (b) The parties also acknowledge the following contingency is also a condition precedent to the performance of this Agreement by the City. Briefly stated, the contingency concerns the right of the public to petition for referendum concerning this transaction. This is viewed by the City as unlikely, and discussed at greater length in subsection (i) below.

- (i) Referendum/Election. The City's obligation to acquire the property described herein will be terminated if the City Council's decision to acquire the above-described property is referred by the voters and the voters do not approve the acquisition. "Referred" means a Petition to Refer, signed by the requisite residents, is filed and the voters of the City, at an election, vote to nullify the decision of the City to acquire the property described herein. In the event of a successful referral, this Agreement will be null and void. This contingency will be waived at the later of the expiration date of any referendum period if there is no referendum, or the date following the election canvassing if there is a referendum election, and the acquisition is approved at a referendum election. However, a referendum decision by voters of the City which does not approve the acquisition will permit the City to terminate this Agreement at no cost or liability to the City. A referendum is not likely but all government real estate transactions are subject to the possibility of referendum. The City will be able to waive this contingency 20 days after publication of the Resolution approving this Real Estate Acquisition Agreement. The City will publish the Resolution approving this Real Estate Acquisition Agreement within thirty (30) days of the final signature on this Agreement.

If the foregoing contingencies are not satisfied or resolved or waived by the City, then this Agreement may be terminated at the option of the City and this Agreement shall be null and void.

7. Mutual Understanding.

It shall be understood that the earthen channel will carry drainage flows to the maximum capacity of the channel. There will be rain events that will exceed the capacity of the channel and those storm drainage flows will flow onto neighboring properties outside the earthen channel.

8. Good Faith/Mutual Cooperation.

- (a) The respective parties will in good faith seek to satisfy all contingencies to this Real Estate Acquisition Agreement and will act in a timely manner to permit its prompt Closing.

At any time and from time to time before and after the Closing, the City will, at the request of McClemans, and without further consideration, promptly execute, acknowledge and deliver such further instruments and take such further action as McClemans may reasonably request in order to consummate and confirm the transaction contemplated by this Agreement and to accomplish the purposes of this Agreement; however, no such instruments or actions will impose upon the City any burden or obligation which is in excess of any burden or obligation specifically imposed upon the City pursuant to the terms of this Agreement.

- (b) At any time and from time to time before and after the Closing, McClemans will, at the request of the City, and without further consideration, promptly execute, acknowledge and deliver such further instruments and take such further action as the City may reasonably request in order to consummate and confirm the transaction contemplated by this Agreement and to accomplish the purposes of this Agreement; however, no such instruments or actions will impose upon McClemans any burden or obligation which is in excess of any burden or obligation specifically imposed upon McClemans pursuant to the terms of this Agreement.

9. Review by Counsel. The City and McClemans acknowledge that they each have had an opportunity to review this Agreement, as necessary, with legal counsel, and the parties agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. This Real Estate Acquisition Agreement was prepared by Steven J. Britzman, City Attorney for the City of Brookings.

10. Applicable Law. The laws of South Dakota govern this transaction.

11. Entire Agreement. This written Agreement constitutes the complete Agreement between the parties and supersedes any prior oral or written Agreement between the parties regarding the subject matter of this Agreement. There are no verbal agreements that change this Agreement and no waiver of its terms will be effective unless such are made and executed in writing and duly acknowledged as received by the parties.

12. Binding Effect. This Agreement binds the parties hereto and their heirs, successors and assigns, if any.

Dated this ____ day of _____, 2020.

MCCLEMANS:

PRAIRIE MEADOW, INC., MIKE
McCLEMANS and KATHY McCLEMANS

By: _____

President of Prairie Meadow, Inc.

Mike McClemons

Kathy McClemons

Dated this ____ day of _____, 2020.

CITY:

CITY OF BROOKINGS

(SEAL)

By: _____

Keith W. Corbett, Mayor

ATTEST:

Bonnie Foster, City Clerk