

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – U

DATE: October 4-6

SUBJECT: SDSU 6th Street Land Sale for the SD DOT 6th Street Widening Project in Brookings

The City of Brookings is working with the South Dakota Department of Transportation to widen 6th Street in Brookings. As part of this widening project, the City of Brookings seeks to purchase a section of real property held in trust by the State of South Dakota for the benefit of South Dakota State University for \$5,492.50. The City of Brookings also seeks a temporary access easement to the real property being sold and for abutting real property for \$692.50.

South Dakota State University requests the Board to:

1. Approve the sale of the portion of real property described herein and in a Warranty Deed, a draft of which is included as Attachment I;
2. Approve the temporary access easement for the real property being sold and for abutting real property described herein and in a Temporary Access Easement, a draft of which is included as Attachment II; and
3. Approve a resolution that requests the Commissioner of School and Public Lands to draw up and finalize documents for submission to the Governor to grant the City of Brookings a Warranty Deed for the real property being sold and a Temporary Access Easement for the real property being sold and for abutting real property, a draft of which is included as Attachment III.

(Continued)

DRAFT MOTION 20161004_7-U: I move to approve (1) the sale of the real property described in this item and in a Warranty Deed, a draft of which is included as Attachment I, to the City of Brookings for \$5,492.50, (2) temporary access to the real property being sold and for abutting real property described in this item and in a Temporary Access Easement, a draft of which is included as Attachment II, to the City of Brookings for \$692.50, and (3) a resolution requesting the Commissioner of School and Public Lands to draw up and finalize all necessary documents to grant to the City of Brookings a Warranty Deed for the real property being sold and a Temporary Access Easement for the real property being sold and for abutting real property, which resolution is included as Attachment III, and, upon approval as to form by the Board General Counsel, to request the Governor approve, on behalf of South Dakota State University, the Warranty Deed and Temporary Access Easement.

The various documents are described further below:

Draft Warranty Deed (Attachment I):

The City of Brookings seeks to purchase, for the amount of \$5,492.50, a section of real property described as Lot H3 in the SE1/4 SE1/4 and Lot H1 in Lot B of Lot H2 in the SE1/4 SE1/4 of Section 24, Township 110 North, Range 50 West of the 5th P.M. including Lot B of Lot H2, except the South 160 feet of the West 283.7 feet of the SE1/4 SE1/4, Brookings County, South Dakota, Said Lot H3- SE1/4SE1/4 contains .05 acres (2167 sq. ft.), more or less, Said Lot H1- Lot B of Lot H2 contains 30 sq. ft. more or less, according to the Surveyor's Certificate, a copy of which is attached as Exhibit A to the draft Warranty Deed.

The sale of this property would be handled in conformity with SDCL 5-9-37, SDCL 5-9-34, SDCL 5-9-35 and related provisions, which exempts the transaction from requiring additional legislation, but requires reversion of title to the State of South Dakota for the use and benefit of South Dakota State University should the property cease to be used for highway purposes for two successive years. Mineral rights shall also be reserved to the state as provided by SDCL 5-4-2, SD Const. Art. VIII, §19, SDCL 5-7-3 to 5-7-6 and SDCL 5-2-12. The appraised price for the sale of the property was set pursuant to SDCL 5-9-3.

Draft Temporary Access Easement (Attachment II):

In consideration of \$692.50, a Temporary Access Easement will be granted to the City of Brookings for the real property being sold and for abutting real property, described as the SE1/4 SE1/4 of Section 24, Township 110 North, Range 50 West of the 5th P.M., including Lot B of Lot H2, except the South 160 feet of the West 283.7 feet of the SE1/4 SE1/4, Brookings County, South Dakota, fully delineated in the Surveyor's Certificate a copy of which is attached as Exhibit A to the draft Warranty Deed.

The Temporary Access Easement will be subject to conditions for restoration of property in accordance with project plans, reversion for lack of highway purposes use, and retention of mineral rights.

Resolution (Attachment III):

The resolution approves the sale of the real property described above and in the draft Warranty Deed, the temporary access granted to the real property being sold and for abutting real property described above and in the draft Temporary Access Easement, and requests the Commissioner of School and Public Lands to draw up and finalize documents for submission to the Governor to grant the City of Brookings a Warranty Deed for the property being sold and a Temporary Access Easement for the real property being sold and for abutting real property.

This document prepared by:
 Office of School and Public Lands
 500 E Capitol Avenue
 Pierre, SD 57501
 (605) 773-3303



DRAFT WARRANTY DEED

STATE OF SOUTH DAKOTA

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

The State of South Dakota, Grantor, acting by and through its Governor and the Commissioner of School and Public Lands, of Pierre, Hughes County, South Dakota, for and in consideration of five thousand four hundred ninety two and 50/100 dollars (\$5,492.50) GRANTS, CONVEYS AND WARRANTS TO the City of Brookings, acting by and through its Mayor, 520 3rd Street, Brookings, South Dakota, 57006, the following described real estate in the County of Brookings in the State of South Dakota:

Lot H3 in the SE1/4 SE1/4 and Lot H1 in Lot B of Lot H2 in the SE1/4 SE1/4 of Section 24, Township 110 North, Range 50 West of the 5th P.M. including Lot B of Lot H2, except the South 160 feet of the West 283.7 feet of the SE1/4 SE1/4, Brookings County, South Dakota

Said Lot H3- SE1/4SE1/4 contains .05 acres (2167 sq. ft.), more or less

Said Lot H1- Lot B of Lot H2 contains 30 sq. ft. more or less.

According to the surveyor's certificate of the plat - a copy of which is attached to this deed as Exhibit A; Together with all improvements and appurtenances located thereon.

In accordance with SDCL 5-9-34 and SDCL 5-9-35, it is understood and agreed by and between the parties hereto that the land herein described is to be used for highway purposes and no other purpose whatever and that should said land cease to be used for two successive years for such purpose, that the title thereto shall revert to the State of South Dakota for the use and benefit of South Dakota State University.

Grantor reserves rights-of-way as provided in SDCL 5-4-2. Grantor also reserves all rights to all deposits of coal, ores, metals and other minerals, asphaltum, oil, gas, geothermal resources, and other like substances, as provided by the South Dakota Constitution Art. VIII, §19, SDCL 5-7-3 to 5-7-6, inclusive, and SDCL 5-2-12, 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.

Exhibit A

Release to Right of Way 2-18-2015

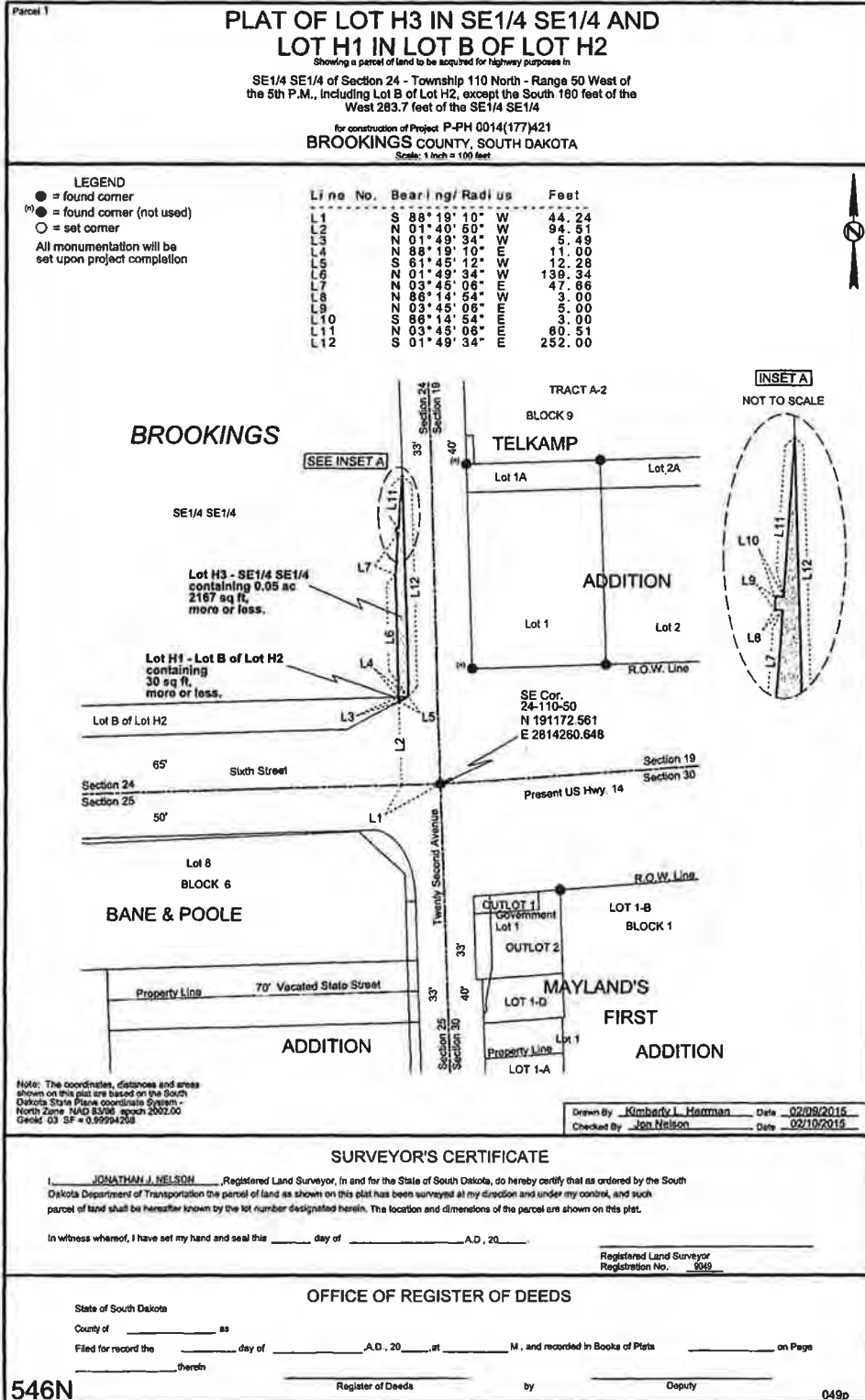
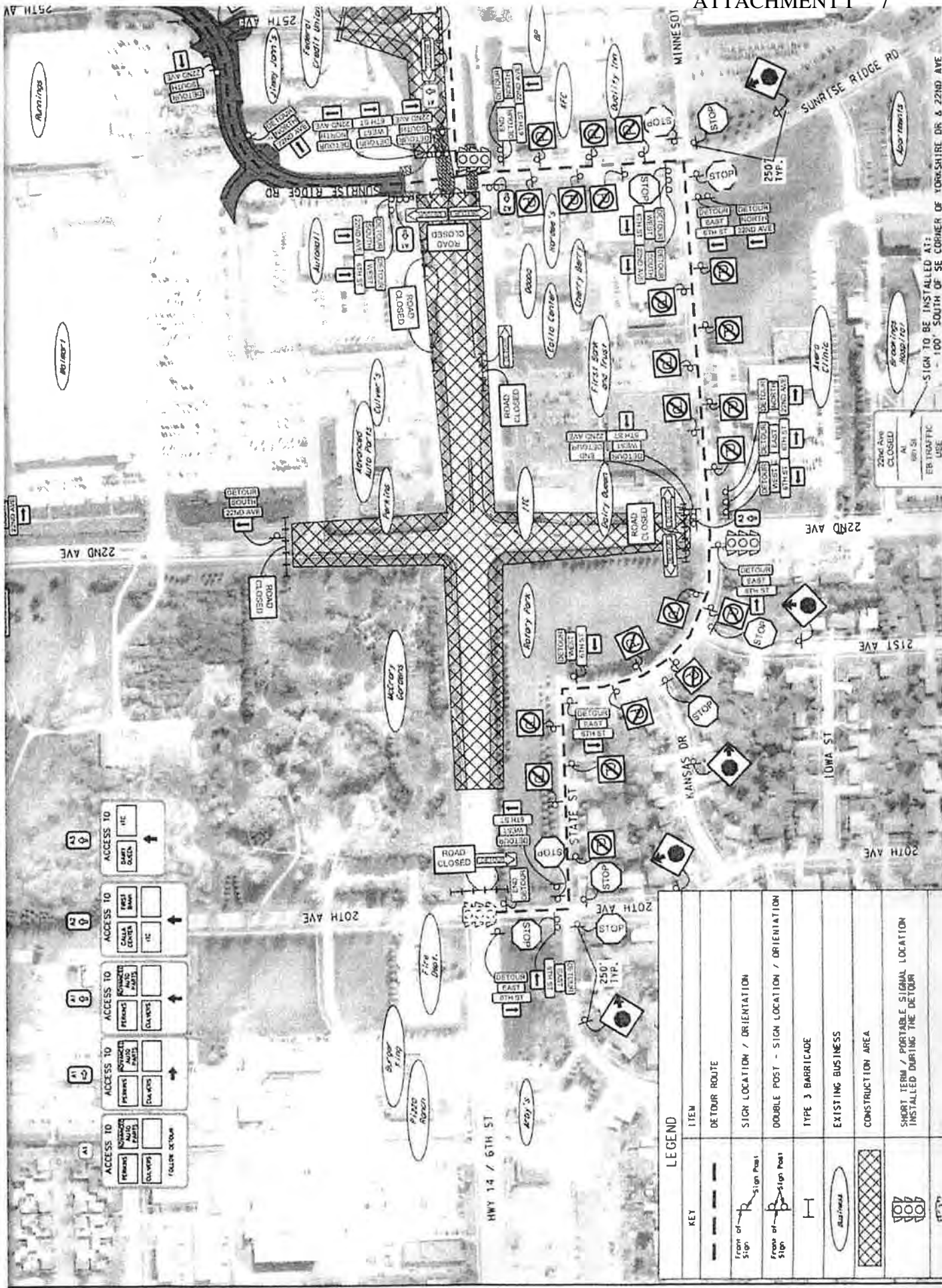


Exhibit A 1 of 6



KEY	ITEM
---	DETOUR ROUTE
From of Sign	SIGN LOCATION / ORIENTATION
Front of Sign	DOUBLE POST - SIGN LOCATION / ORIENTATION
I	TYPE 3 BARRICADE
○	EXISTING BUSINESS
▨	CONSTRUCTION AREA
⓪	SHORT TERM / PORTABLE SIGNAL LOCATION INSTALLED DURING THE DETOUR

SIGN TO BE INSTALLED AT:
100' SOUTH OF SE CORNER OF YORKSHIRE DR & 22ND AVE

22nd Ave CLOSED AT 10th St
EB TRAFFIC USE

This document prepared by:
 Office of School and Public Lands
 (605)773-3303
 500 East Capitol Avenue
 Pierre, South Dakota 57501-5070

DRAFT TEMPORARY ACCESS EASEMENT

For and in consideration of the sum of six hundred ninety two and 50/100 dollars (\$692.50), the receipt of which is hereby acknowledged, the Office of School and Public Lands on behalf of the State of South Dakota, for South Dakota State University hereinafter referred to as Grantor, does hereby grant and convey unto the City of Brookings, Grantee, 520 3rd Street, Brookings, Brookings County, South Dakota, 57006, a temporary access easement, subject to the conditions hereinafter set forth, in, on, over, and across the following described property:

The SE1/4 SE1/4 of Section 24, Township 110 North, Range 50 West of the 5th P.M., including Lot B of Lot H2, except the South 160 feet of the West 283.7 feet of the SE1/4 SE1/4, Brookings County, South Dakota, (as shown on attached Exhibit A),

Which tract of land is fully delineated in Surveyor's Certificate from Jonathan J. Nelson a registered land surveyor – Registration No. 9049, along with attached documents 1-6, a copy of which is attached hereto (Exhibit A).

This grant is subject to the following conditions:

1. Such easement shall include the right to ingress and egress to enter upon abutting property when necessary to maintain and inspect fillslopes, cutslopes and drainage structures for highway purposes upon said property. Grantor agrees that the rights contained herein are intended to benefit the Grantee, the subtenants of Grantee, and any sub-subtenants, including their successors or assigns.
2. Grantor agrees that this easement may not be modified or revised in a manner that would diminish the rights of Grantee, its successors or assigns.
3. This easement is granted subject to all existing rights of way and easements over and upon the Property.
4. Grantor reserves the right to utilize the property for all purposes not inconsistent with the easement rights herein conveyed. Grantor or Grantee may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.
5. In accordance with the plans and specifications now on file in the office of the Department of Transportation, that said Grantee, its agents, representative, assigns or any Contractor employed by the Grantee, may enter upon the above described premises owned by the Granter and use all

designated temporary easement areas for the proper construction of said highway, such as fill slope, cut slope, detour, or channel change areas are estimated to be 3,447 square feet for this project and payment is included in the amount stated above at the rate of \$.20 per square foot. It is further agreed and understood by the Grantor that any additional temporary easement area necessary for the proper completion of the facility may also be so used and the additional area will be measured and paid for separately at the same rate herein stated. It is agreed and understood that all the areas used shall be sloped and graded down as smooth as is practicable in the construction of said highway and left in a neat and workmanlike manner and reclaimed to a finished grade. Finished grade includes restoration of sidewalks, landscaping, and fencing to prior condition to the satisfactory approval of the Grantor. Control boxes will be relocated to project specifications. Said Grantee may enter upon said land and maintain said channel changes necessary for the proper operation of said highway facility during the life of this agreement; and;

6. The Grantee will be responsible for all costs and liabilities regarding the installation, maintenance and use of the above-described easement area. This grant is subject to the further condition that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee's use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agrees to reimburse Grantor for any judgment against it arising from Grantee's use of the property. For any claims arising out of the Grantee's installation, maintenance and use of the access lane and above-described easement area, Grantee agrees to indemnify, defend and hold Grantor harmless. Nothing in this agreement shall be read to waive Grantor's sovereign or statutory immunity.
7. The Grantee shall maintain the surface area of the easement during construction.
8. If the above described real property granted by this temporary easement ceases to be used for highway construction purposes for two (2) consecutive years the easement terminates and reverts to Grantor or its successors or assigns.
9. The Grantor has and retains the right to lease, sell, or otherwise convey the property or any party thereof, subject to the terms of this easement, provided, however, that this easement shall remain in full force and effect until the expiration of the terms hereof notwithstanding such a lease, sale or conveyance.
10. The above described easement is subject to a reservation of further easements and rights-of-way for irrigation ditches and canals, as provided by South Dakota Codified Laws 5-4-2. This easement is also subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances provided by the South Dakota Constitution Art. VIII, §19, South Dakota Codified Law 5-7-3 to 5-7-6, inclusive, and South Dakota Codified Law § 5-2-12, and in any law of the State of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.

11. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of Grantee or any person or entity succeeding to its interest to comply with the conditions stated herein shall cause the easement to terminate and to revert to Grantor or any person or entity succeeding to its interest.

12. This easement shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for interpretation and enforcement of the provisions of this Right- of- Way and Easement shall be the Circuit Court for the Sixth Circuit located in Hughes County, Pierre, South Dakota.

IN WITNESS WHEREOF, the STATE OF SOUTH DAKOTA has caused this Instrument to be executed in the name of the State, by the Governor and attested to by the Commissioner of School and Public Lands and the Grantee has set its hand and seal this _____day of _____, 2016.

APPROVED BY:

GRANTOR

STATE OF SOUTH DAKOTA

By:_____

Dennis Daugaard, Governor

ATTEST BY:

OFFICE OF SCHOOL AND PUBLIC LANDS

Ryan Brunner, Commissioner

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

Be it remembered that on this ____ day of _____, 2016, before me a Notary Public within aforesaid County and State, personally appeared Dennis Daugaard, Governor, known to me to be the person who described in, and who executed the within and forgoing instrument and acknowledged to me that executed the same.

Notary Seal

Notary Public

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

Be it remembered that on this ____ day of _____, 2016, before me a Notary Public within aforesaid County and State, personally appeared Ryan Brunner, Commissioner, known to me to be the person who described in, and who executed the within and forgoing instrument and acknowledged to me that executed the same.

Notary Seal

Notary Public

Commission Expires

RESOLUTION

Resolution approving the sale of real property and grant of a temporary access easement to the City of Brookings for the SD DOT project to widen 6th Street in Brookings and requesting the Commissioner of School and Public Lands to draw up the necessary documents to grant the City of Brookings a Warranty Deed for the real property sold and a Temporary Access Easement for the real property being sold and abutting real property.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of South Dakota State University, approve the sale of real property described below and in a Warranty Deed, in consideration of \$5,492.50 to be paid by the City of Brookings for the SD DOT project to widen 6th Street in Brookings. The Grantor approves temporary access by the City of Brookings for the SD DOT project for the real property sold and abutting real property as described below and in a Temporary Access Easement for the consideration of \$692.50.

The Grantor pursuant to the authority vested to it under SDCL § 5-2-11, hereby requests the Commissioner of School and Public Lands to draw up and finalize all necessary documents and to forward them to the Governor to request their execution in order to grant to the City of Brookings:

1. A Warranty Deed for a section of real property described as Lot H3 in the SE1/4 SE1/4 and Lot H1 in Lot B of Lot H2 in the SE1/4 SE1/4 of Section 24, Township 110 North, Range 50 West of the 5th P.M. including Lot B of Lot H2, except the South 160 feet of the West 283.7 feet of the SE1/4 SE1/4, Brookings County, South Dakota, Said Lot H3- SE1/4SE1/4 contains .05 acres (2167 sq. ft.), more or less, Said Lot H1- Lot B of Lot H2 contains 30 sq. ft. more or less, according to the Surveyor’s Certificate, a copy of which is attached as Exhibit A to the Warranty Deed; and
2. A Temporary Access Easement for the widening of 6th Street, over Lot H3 in the SE1/4 SE1/4 and Lot H1 in Lot B of Lot H2 in the SE1/4 SE1/4 of Section 24, Township 110 North, Range 50 West of the 5th P.M. including Lot B of Lot H2, except the South 160 feet of the West 283.7 feet of the SE1/4 SE1/4, Brookings County, South Dakota, Said Lot H3- SE1/4SE1/4 contains .05 acres (2167 sq. ft.), more or less, Said Lot H1- Lot B of Lot H2 contains 30 sq. ft. more or less, according to the Surveyor’s Certificate, a copy of which is attached as Exhibit A to the Warranty Deed.

Grantor requests that any grant of an easement provide that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agrees to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.

Dated this fifth day of October 2016.

SOUTH DAKOTA BOARD OF REGENTS

By: _____
Randy Schaefer
President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Aberdeen, South Dakota, on the fifth day of October 2016, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this fifth day of October 2016

SOUTH DAKOTA BOARD OF REGENTS

By: _____
Kevin Schieffer
Secretary