

REAL PROPERTY TRANSFER AGREEMENT

THIS REAL PROPERTY TRANSFER AGREEMENT is made and executed by and between the City of Brookings, South Dakota, (hereinafter referred to as the “City”), and Brookings School District 5-1, (hereinafter referred to as “Seller” or “BSD 5-1”). The City and the Brookings School District are collectively referred to as “the parties” herein.

WITNESSETH:

WHEREAS, the City desires to acquire the real property described below and BSD 5-1 agrees to convey to the City, pursuant to the terms and conditions of this Real Property Transfer Agreement and in accordance with SDCL 6-5-2.

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

1. Conveyance of Real Property. The Seller hereby agrees to convey to the City and the City hereby agrees to acquire from BSD 5-1 the following described real property:

Lot One Hundred Two (102) of Block Ten (10) of Second Addition to the City of Brookings, County of Brookings, State of South Dakota¹.

2. Effective Date. This Real Property Transfer Agreement is effective upon its execution by all parties.

3. Consideration. No cash or other consideration is required for the conveyance of the above-described property, however the City agrees to utilize the above-described property for recreational and other public purposes. In addition, the City agrees to make the repairs and improvements it determines, in its sole discretion, are necessary to utilize the building for recreation and other public purposes.

4. Merchantable Title/Real Estate Closing Documents and Miscellaneous. BSD 5-1 will convey the property free of liens and mortgages, but the property may be subject to easements, rights of way and restrictions of record. BSD 5-1 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 reservations of record.

In addition, the City and BSD 5-1, as the case may be, will also perform the following:

¹ The property described is also referred to herein as the “Fifth Street Gym” property.

A. **Title Memo in Lieu of Title Insurance.** The City will order a Title Memorandum at its sole expense to verify title to the above-described property. No other Title Insurance is required for this transaction.

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 BSD 5-1 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. Because the property is owned by the BSD 5-1, which is a political subdivision, the property is exempt from real property taxes.

D. **Closing/Possession/Insurance.** The Closing date will be scheduled at the convenience of the parties at such time as all contingencies have been satisfied or waived, with title to be conveyed by Warranty Deed to the City at time of Closing. BSD 5-1 agrees to maintain all existing insurance coverage on the property until the time of Closing.

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

F. **Condition of the Property.** The City has inspected the above-described property and accepts the condition of the property “as is”.

G. **Parking Lot Use Easement.** An Easement for Use of the Parking Lot located on the adjoining Lot One Hundred One (101) has been granted to Brookings School District 5-1. The City will require the use of the parking lot located on Lot One Hundred One (101) in order to utilize the 5th Street Gym property which is the subject of this Agreement. Accordingly, the sale of the 5th Street Gym Property requires either the Assignment of the Easement for Use of the Parking Lot Use or the issuance of a new Easement containing similar terms by the County of Brookings to the City of Brookings with the consent of 1921 LLC, the other user of the parking lot described herein. A copy of the current Easement for Use of Parking Lot is attached hereto and marked Exhibit “A”.

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

- (a) That BSD 5-1 provides 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 BSD 5-1, and BSD 5-1 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 up to sixty (60) days to provide BSD 5-1 with time to correct said defect.

- (b) Parking Lot Easement Assignment. That BSD 5-1 assigns its current Easement for Use of Parking Lot (Exhibit “A”) with the consent of both the County of Brookings and 1921 LLC, the other parking lot users.
- (c) Referendum/Election. 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 discussed at greater length in subsection (i) below.
 - (i) The BSD 5-1’s obligation to sell and the City’s obligation to acquire the property described herein will be terminated if the BSD 5-1’s decision to sell or the City’s decision to acquire the above-described property is referred by the voters and the voters do not approve the transaction. “Referred” means a Petition to Refer, signed by the requisite residents, is filed and the voters of the School District or City, at an election, vote to nullify the decision of the School District to convey or the City’s decision 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 this transaction is approved at a referendum election. However, a referendum decision by voters of the City which does not approve the sale will result in termination of this Agreement at no cost or liability to either party. A referendum is not likely but all government real estate transactions are subject to the possibility of referendum. The parties will be able to waive this contingency 20 days after publication of the Resolution approving 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.

6. Good Faith/Mutual Cooperation.

- (a) At any time and from time to time before and after the Closing, the City will, at the request of BSD 5-1, and without further consideration, promptly execute, acknowledge and deliver such further instruments and take such further action as BSD 5-1 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, BSD 5-1 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 BSD 5-1 any burden or obligation which is in excess of any burden or obligation specifically imposed upon BSD 5-1 pursuant to the terms of this Agreement.

7. Review by Counsel. The City and BSD 5-1 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 Property Transfer Agreement was prepared by Steven J. Britzman, City Attorney for the City of Brookings.

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

9. 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.

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

Dated this ____ day of April, 2025.

SCHOOL
BROOKINGS SCHOOL DISTRICT 5-1

By: _____
Its: _____

Dated this ____ day of April, 2025.

CITY:
CITY OF BROOKINGS

(SEAL)

By: _____
Paul Briseno, City Manager

ATTEST:

Bonnie Foster, City Clerk