Settlement Agreement and Release

This Settlement Agreement and Release is made this 18th day of August, 2020, between the City of Brookings, South Dakota ("City") and Brookings County ("County").

1. *The Litigation.* The City and the County are parties to a pending lawsuit styled *Brookings County v. City of Brookings* involving historic-preservation and the County's proposed addition to the Brookings County Detention Center ("the Project"). The case was originally filed in Brookings County as an appeal by Brookings County from the City's action on the County's application for historic review under SDCL § 1-19A-11.1. The appeal was venued in the Third Judicial Circuit and assigned to the Honorable Kent A. Shelton as Civ. 19-000188. The circuit court issued a memorandum decision deciding the County's appeal on March 13, 2020, a copy of which is attached as Exhibit A. The circuit court then entered findings of fact and conclusions of law and an order dated April 1, 2020, copies of which are attached as Exhibits B and C. The City filed a timely notice of appeal to the South Dakota Supreme Court, which is pending as Appeal No. 29312. Both parties have filed opening briefs, but the City has not filed its reply brief. The City has also filed an action against the County in Brookings County Civ. 19-248.

2. *Purpose and Limitation.* The City and County are entering into this agreement in the spirit of cooperation between public entities to serve the public and further to end the litigation between the entities related to the Project and to further attempt to alleviate the increased costs of construction given the pending August 21, 2020 deadline for the County to accept bids on the Project. This Settlement Agreement resolves the litigation, but it is specifically agreed by both the City and the County that this agreement does not resolve the issue of whether County must obtain a building permit for construction of its facilities within the City and it further does not resolve which political body is the proper entity to perform the ultimate determination of whether there are no feasible and prudent alternatives under SDCL § 1-19A-11.1 when the County is the party undertaking its own building project.

3. *Agreement.* For good and valuable consideration set forth herein, the parties agree as follows:

a. The City agrees to dismiss its current appeal to the South Dakota Supreme Court in Appeal No. 29312. Further, the City and the County will stipulate upon execution of this Agreement to dismiss the pending action in Brookings Civ. 19-248, with prejudice.

b. The County agrees that dismissal of the City's appeal to the South Dakota Supreme Court and execution of this Agreement preclude any claim by the County against the City for delay damages or increased construction costs related to the Project as a result of the litigation between the parties or in any other way attributable to the City, and the County agrees not to start or prosecute such a claim, which is hereby released.

c. After the City grants the building permit referenced in subparagraph e, the City will file a motion, including a copy of this Agreement, asking the circuit court to enter an order without further notice or hearing vacating the memorandum decision, findings of fact, conclusions of law, and order identified in paragraph 1 of this Agreement, and then dismissing the County's appeal with prejudice. The County agrees not to oppose the City's motion If the circuit court does not agree to enter an order consistent with the Stipulation, the parties agree that the Memorandum Opinion, Findings of Fact and Conclusions of Law, and Order referenced respectively in Exhibit A, B, and C will have no binding preclusive effect and will be treated as if they had been vacated and the County's appeal dismissed with prejudice.

d. The County previously submitted drawings for the Project to both the City of Brookings Historic Preservation Commission and the State Historic Preservation office for review. The County agrees that in completing construction of the detention center addition it will not increase the size, scale, massing, or materially change the placement of the building as set forth in those drawings. Any material deviation from the drawings will constitute a breach of this Agreement, which the parties agree may be specifically enforced. The prevailing party in any action to enforce the terms of this paragraph will be entitled to apply for reasonable attorney fees.

e. The parties agree that the County will timely apply for a building permit and submit all the usual and necessary documents for the permit to be granted, and that the City will act on the County's completed application within 30 days and grant a building permit for the Project. The City will not charge the County for the building permit. The City agrees that time is of the essence in the issuance of the building permit due to the County's impending bid deadline. The City's failure to act as outlined in this paragraph will constitute a breach of this Agreement, which the parties agree may be specifically enforced. The prevailing party in any action to enforce the terms of this paragraph will be entitled to apply for reasonable fees.

f. The parties agree, for the purposes of this Project, that no further historic review is required, even though County agrees to request a building permit from City. For purposes of this Project, the parties agree that the obligations of both the City and the County for historic review under SDCL § 1-19A-11.1 and 1-19B-62 have been satisfied.

g. The County previously obtained a variance concerning the setback requirements and the City will extend that variance through the term of the project. City further agrees to allow for the realignment of a portion of Fourth Street consistent with the Project plan documents at the County's sole expense.

h. The parties hereafter intend to work in the spirit of cooperation and in the best interest of the public in entering into this agreement and to further treat each entity in good faith and to both act to foster goodwill for both entities.

4. *No admission of liability.* The parties agree that this settlement is a compromise of disputed claims and that no party admits wrongdoing or liability of any sort. This Agreement is made to terminate further controversy.

5. *Governing law.* This Agreement is made and entered into in South Dakota and will be interpreted under the substantive laws of the State of South Dakota. Any dispute related to this Agreement will be governed by South Dakota law.

6. *Entire agreement.* The parties agree that this Agreement is their entire agreement and that the terms are contractual, not a mere recital.

Dated this 18th day of August, 2020.

CITY OF BROOKINGS

By _____
Its City Manager

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF Brookings)

On this the 18th day of August, 2020, before me personally appeared Paul Briggeno, of the City of Brookings, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that the City Council + City Manager executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Bonnie Foster
Notary Public - South Dakota
My Commission Expires:
(seal)

BONNIE FOSTER
NOTARY PUBLIC
SOUTH DAKOTA

Dated this ___ day of August, 2020.

BROOKINGS COUNTY

By _____
Its _____

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF _____)

On this the _____ day of August, 2020, before me personally appeared _____, of Brookings County, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that _____ executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public - South Dakota
My Commission Expires:
(seal)