

Brookings City Council
July 26, 2016

The Brookings City Council held a meeting on Tuesday, July 26, 2016 at 5:00 p.m., at City Hall with the following members present: Mayor Tim Reed, Council Members Keith Corbett, Mary Kidwiler, Dan Hansen (via phone), Ope Niemeyer, Nick Wendell, and Patty Bacon. City Attorney Steve Britzman, City Manager Jeffrey Weldon, and Deputy City Clerk Bonnie Foster were also present.

Executive Session

A motion was made by Council Member Kidwiler, seconded by Council Member Niemeyer, to enter into executive session at 5:01 p.m. for purposes of consulting with legal counsel regarding proposed or pending contractual matters with the City Council, City Manager, City Attorney, Deputy City Clerk, Kevin Catlin, Assistant to the City Manager, and Mike Struck, Community Development Director present. All present voted yes; motion carried. A motion was made by Bacon, seconded by Corbett, to exit out of executive session at 5:27 p.m. All present voted yes; motion carried.

Consent Agenda

A motion was made by Council Member Wendell, seconded by Council Member Corbett, to approve. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Reed, Kidwiler, Bacon, and Wendell.

3.A. Action to approve the agenda.

3.B. Action to approve the July 12 City Council Minutes.

3.C. Action to cancel the October 25, 2016 Council Meeting.

3.D. Action on Resolution 16-060, a Resolution concurring in the placement of a Stop Sign on Folsom Street at its intersection with Division Avenue.

Resolution 16-060 - Concurring in the Placement of a Stop Sign on Folsom Street at its
Intersection with Division Avenue

Whereas, Section 82-373 of the Revised Ordinance of the City of Brookings, provides for approval by the City Council for placement of stop signs in locations other than along through streets.

Now, Therefore, Be It Resolved that the City Council concurs in the recommendation of the Traffic Safety Committee and the City Manager and approves the placement of a stop sign on Folsom Street at its intersection with Division Avenue.

3.E. Action on Resolution 16-061, a Resolution concurring in the placement of a Stop Sign on Christine Avenue at its intersection with 15th Street South.

Resolution 16-061 - Concurring in the Placement of a Stop Sign on Christine Avenue at
its Intersection with 15th Street South

Whereas, Section 82-373 of the Revised Ordinance of the City of Brookings, provides for approval by the City Council for placement of stop signs in locations other than along through streets.

Now, Therefore, Be It Resolved that the City Council concurs in the recommendation of the Traffic Safety Committee and the City Manager and approves the placement of a stop sign on Christine Avenue at its intersection with 15th Street South.

3.F. Action on Resolution 16-062, a Resolution concurring in the placement of Stop Signs on 12th Street South at the intersection of Christine Avenue.

Resolution 16-062 - Concurring in the placement of Stop Signs on 12th Street South at the intersection of Christine Avenue

Whereas, Section 82-373 of the Revised Ordinance of the City of Brookings, provides for approval by the City Council for placement of stop signs in locations other than along through streets.

Now, Therefore, Be It Resolved that the City Council concurs in the recommendation of HDR, Inc. and the City Manager and approves the placement of stop signs on 12th Street South at the intersection of Christine Avenue.

FIRST READING: Ordinance 16-015. Introduction and First Reading was held on Ordinance 16-015, an Ordinance to Rezone the S ½ of NW ¼ of Section 34-T110N-R50W from an Agricultural A District to a Single Family R-1C District, Single Family R-1D District, Two-Family Residence R-2 District, and Multi-Family Residence R-3 District and from a Single Family R-1C District to a Multi-Family R-3 District (West of Timberline Addition). Public Hearing: August 9, 2016.

Ordinance 16-014. A public hearing was held on Ordinance 16-014, an Ordinance Amending Article III of Chapter 62 of the Code of Ordinances Pertaining to Weed Control. A motion was made by Council Member Wendell, seconded by Council Member Corbett, to approve Ordinance 16-014. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Reed, Kidwiler, Bacon, and Wendell.

Letter of Intent for Real Estate Transfer. A motion was made by Council Member Bacon, seconded by Council Member Hansen, that the Letter of Intent between the City of Brookings and Brookings County for a Real Estate Transfer, be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Reed, Kidwiler, Bacon, and Wendell.

Letter of Intent for the Exchange of Real Property

This Letter of Intent for the Exchange of Real Property is made by and between the County of Brookings South Dakota, referred to in this Letter as the "County", and the City of Brookings, South Dakota, referred to in this Letter of Intent as the "City".

1. Background and Purpose of this Letter of Intent

The County of Brookings and the City of Brookings have long enjoyed a cooperative and effective relationship, as evidenced most recently by their joint design, construction, management and use of the Brookings City & County Government Center. Over the years, the governing boards of the County and City and their

respective staff have discussed the possible relocation of the Brookings County Resource Center. The City, at various times, has expressed an interest in acquiring the Brookings County Resource Center to expand its Swiftel Center facilities. Recently, the newly-constructed Brookings Outdoor Adventure Center has been identified as a possible new home for the County's programs and activities conducted within the Brookings County Resource Center. The Brookings Outdoor Adventure Center is located pursuant to a long-term lease upon City property and the County and City believe the Brookings Outdoor Adventure Center Building could accommodate the programs and activities of both the Outdoor Adventure Center and the Brookings County Resource Center.

Based upon the foregoing, the County and the City desire to set forth this Letter of Intent to Exchange their respective interests in these facilities so that, upon the successful completion of this transaction, the County's Resource Center would relocate to and occupy the Outdoor Adventure Center Building, and the City would acquire, in exchange, the Brookings County Resource Center.

This Letter of Intent is intended to be a nonbinding Statement of the Intent of the County and the City to prepare for a transaction which would be consummated with a binding Resolution of both the County and the City Authorizing the Exchange of Real Property.

2. Acquisition by the City of the County Resource Building

The City of Brookings will acquire from the County of Brookings, all right, title, and interest to the County Resource Center, located upon the following described property:

A portion of the northwest corner of Lot 5 in Wiese Addition to the City of Brookings, County of Brookings, State of South Dakota, located at 826 32nd Avenue, Brookings, South Dakota, as indicated on Exhibit "A" attached hereto and incorporated herein by this reference.

3. Acquisition by the County of the approximately 3.77 acres of land upon which the Outdoor Adventure Center is located.

The City of Brookings will convey all right, title and interest in the approximately 3.77 acres of land upon which the Outdoor Adventure Center Building is located to the County of Brookings.

The Outdoor Adventure Center Building is located at 2810 22nd Avenue South, Brookings, South Dakota, as shown on Exhibits "A-1" and "A-2", attached hereto and incorporated herein by this reference. A survey of the area to be acquired by the County may be required prior to closing so the exact dimensions may be determined.

4. Additional Consideration to the County of Brookings

As consideration for the above exchange, the City of Brookings shall pay to the County of Brookings the sum of \$900,000.00 for the purchase of the County Resource Center, with \$400,000.00 credit for the conveyance of approximately 3.77

acres of land upon which the Outdoor Adventure Center is located. The City would pay the remaining \$500,000.00 to the County in five equal payments over a five (5) year period interest-free.

5. Agreement to jointly develop a plan for the exchange of Real Property

The respective Governing Boards of the County of Brookings and City of Brookings will direct staff to develop the specific plans to complete the exchange described herein, with the date of the exchange to occur on or before December 31, 2016.

6. Termination of this Letter of Intent

Either party to this Letter of Intent may terminate this Agreement at any time prior to closing by providing written Notice to the other party. If either party terminates prior to closing, the parties will each pay one-half of the costs incurred with respect to this Agreement. Upon the successful closing of the transaction set forth in this Agreement, the parties will also each pay one-half of all costs incurred to complete this transaction.

7. Additional Terms to be Addressed Prior to Closing

In addition, the City of Brookings and the County of Brookings will execute a long-term joint use parking lot agreement for use and maintenance of the parking lot serving the Outdoor Adventure Center Building.

The Brookings County 4-H Program would still have use of the Swiftel Center for specific pre-determined events, including Achievement Days, the Horse Show, the Dog Show, and any other events as agreed to.

Any agreement between the City and the County is contingent upon a transaction between the County of Brookings and the Outdoor Adventure Center whereby the Outdoor Adventure Center conveys the facility to Brookings County, with closing on such transaction to be simultaneous with the closing on the transactions between the City and the County.

IN WITNESS WHEREOF the Parties hereunto agree and execute this Agreement on the day and year set forth below.

Dated this _____ day of _____ 2016.

Dated this _____ day of _____ 2016.

APPROVED:
BY CITY OF BROOKINGS
Mayor
ATTEST:
Title: City Clerk

APPROVED:
BY BROOKINGS COUNTY
Commission Chairperson
ATTEST:
Finance Officer

A 3.77 acre "T" shaped area at the Southeast corner of Southbrook Softball Complex as shown on Exhibit "A-2." Starting at a point Forty Feet (40') West of the Centerline of 22nd Avenue and Twenty Feet (20') North of the South edge of the Complex's gravel parking, then proceeding South Three Hundred Twenty Feet (S 320'), then West Three Hundred Feet (W 300'), then North Ninety Feet (N 90'), then West Three Hundred Eighty Feet (W 380'), then North One Hundred Ninety Feet (N 190'), then East Four Hundred Eighty Feet (E 480'), then North Forty Feet (N 40'), then East Two Hundred Feet (E 200'), to the starting point.

Memorandum of Agreement for SDSU Performing Arts Center.

A motion was made by Council Member Corbett, seconded by Council Member Niemeyer, that a Memorandum of Agreement between the City of Brookings and South Dakota State University pertaining to the SDSU Performing Arts Center, be approved. AMENDMENT TO THE MOTION: Motion was amended to amend Section 8B as follows "The City shall provide, or cause to be provided, \$5.5 million within 90 days of execution of this agreement. The remaining \$500,000 shall be paid, within 30 days of City satisfaction or compliance with applicable ADA Policies." Public Comment: Jessie Kuechenmeister, Committee for People who have Disabilities Chair, and Steve Bayer. FRIENDLY AMENDMENT: A friendly amendment was made by Council member Hansen, to include the City's ADA Policy requirements as set forth in Section 8C, including the City's specific ADA requirements for Family Restrooms, Platform Lifts and Automatic Door Openers. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Reed, Kidwiler, Bacon, and Wendell.

MEMORANDUM OF UNDERSTANDING
REGARDING THE PERFORMING ARTS CENTER AT SDSU

WHEREAS, the Seventy-Third session of the Legislature of the State of South Dakota by Chapter 107 (SB 23), signed March 13, 1998, authorized the Board of Regents to contract for the construction, completion, furnishing, equipping and maintaining of a Performing Arts Center at South Dakota State University, Brookings, at an estimated cost of \$10,400,000 paid from other funds under the control of the Board of Regents, from gifts and grants to South Dakota State University specifically for this purpose, including bond proceeds provided by the City of Brookings, and from financing provided pursuant to chapter 13-51A, all of which were appropriated to the Board of Regents for the purposes of the act; and

WHEREAS, Section 2 of the act provided that the Board of Regents should set aside the sum of \$1,040,000 for the purpose of maintenance and repair of the facility to be paid from other funds under the control of the Board of Regents including gifts and grants; and

WHEREAS, Section 3 of the act empowered the Board of Regents to expend funds obtained for the purpose of the act and appropriated the funds to the Board; and

WHEREAS, Section 4 provided that the administration of the design and construction of these facilities and oversight of building committees appointed therefor, as provided in Chapter 5-14-3 shall be under the general charge and supervision of the Governor and the executive director of the Board of Regents or their designees; and

WHEREAS, the City of Brookings by virtue of the power granted to the City of Brookings under SDCL 9-12-4 and 9-12-5 has the power to enter into an agreement with the State of South Dakota and with any authorized agency of the state to carry out any authorized municipal function, and is authorized to give and convey any personal property of the municipality to the state to be used for an authorized public purpose upon the terms and in the manner provided by resolution of the governing body; and

WHEREAS, the State of South Dakota caused to be platted property described as follows, to-wit:

Plat of South Dakota State University, located in the Southwest Quarter of the West half of the northeast Quarter, Section 24, Township 110 North, Range 50 West, Brookings, Brookings County, South Dakota

and upon which real property is constructed the Performing Arts Center facility as authorized by Chapter 107 of the 1998 Session Laws for the State of South Dakota; and

WHEREAS, the State of South Dakota is expanding the original construction of the Performing Arts Center facility on the campus of South Dakota State University, Brookings, South Dakota, on behalf of the Board of Regents of the State of South Dakota, as authorized by 2016 HB 1016; and

WHEREAS, the City of Brookings has determined the facility has positive, far-reaching benefits that extend well beyond that of South Dakota State University which will aid in the Brookings area becoming a major destination and generator for the appreciation and expansion of cultural awareness, fine arts, and artistic creativity warranting the City of Brookings' commitment to contribute to the financing for the expansion of said facility to enhance the availability of multi-use facilities for the City and surrounding area; and

WHEREAS, in order to recognize the cooperative effort of the City of Brookings and South Dakota State University for the use of the facility, which is being jointly expanded, and in order to reduce to writing the contractual obligation of the Board of Regents and the local unit of government, namely, the City of Brookings, a municipal corporation of the State of South Dakota, the undersigned parties have approved this Memorandum of Understanding for intergovernmental cooperation with respect to the Performing Arts Center.

NOW, THEREFORE, this Memorandum of Understanding and legal binding contract is entered into by and between the Board of Regents of the State of South Dakota on behalf of South Dakota State University and the City of Brookings, a municipal corporation of the State of South Dakota, to replace all prior agreements of the parties

and to set forth in writing in general terms the funds to be provided by the City of Brookings for the Performing Art Center construction and expansion and the right of access to the facility and the nature of the cooperative arrangements, which will be utilized in the use of the facility to maximize the benefit, not only to the campus of South Dakota State University, but also to the City of Brookings and surrounding Brookings County area.

1. All parties to this agreement recognize that this is a legal binding contract granting right of access to the facility in the manner contractually established by the Board of Regents and the City of Brookings, which is granted and given in consideration of the payment by the City of Brookings of \$6,000,000 for the original construction and \$6,000,000 for the expansion of and the equipping and furnishing of a Performing Arts Center facility at South Dakota State University, Brookings, South Dakota.
2. All parties to this agreement recognize that the facility is primarily intended for the educational and cultural needs of the campus of South Dakota State University, under the direction of the Board of Regents.
3. The administration of South Dakota State University, through the Board of Regents, shall be responsible for the primary management and maintenance of the facility, including scheduling, security, maintenance, control of food service, formulation and enforcement of building rules, and establishment of fee schedules for use of the facility.

A copy of the South Dakota State University Performing Arts Center Policy is provided in Appendix A. This policy is subject to revision by South Dakota State University over the course of the lifetime of this Memorandum of Understanding.

4. Special activities, such as events sponsored by the City of Brookings, the Brookings School District, or other community organizations for which other accommodations in the surrounding area are not available or appropriate, shall be scheduled and permitted when the facility is available and not needed for other duly scheduled events or activities. South Dakota State University shall make available fifty (50) days in each calendar year for scheduling in the facility for use by Brookings School District or groups sponsored by the City. The priority of users of the facility is established in the South Dakota State University Performing Arts Center Policy (See Appendix A).

In consideration of the financial participation from the City of Brookings toward this project, the City of Brookings will be entitled use of the facility through South Dakota State University adopted scheduling and reservation procedures, guaranteeing up to ten (10) days for each calendar year without a facility rental charge for a period of twenty-five

(25) years after South Dakota State University's final acceptance of the expanded Performing Arts Center. Once scheduled, the reservations will not be revoked by the managing entity due to other priorities, absent written agreement of the parties. The City of Brookings will pay applicable set-up, equipment, custodial, food service, or security fees associated with the use pursuant to South Dakota State University's usual and customary fee schedule for such services. Upon expiration of the twenty-five (25) year period, priority scheduling set forth in this Memorandum of Understanding shall continue, but all access will be subject to the facility rental charges and all other fees in accordance with South Dakota State University's Performing Arts Center customary fee schedules.

5. The administration of South Dakota State University shall cooperate with City and School District officials and other organizations in the use of the facility for major spectator events or other activities to the extent that such events do not cause hazards to the maintenance of the facility or conflict with regularly scheduled South Dakota State University events or activities.
6. All parties to this agreement agree to the establishment of an advisory committee comprised of three (3) members, said members including: (1) the Executive Vice President for Academic Affairs at South Dakota State University, or designee; (2) the Mayor of the City of Brookings, or designee from the Brookings City Council; and (3) the Superintendent of the Brookings School District, or designee. Other individuals may be invited to attend meetings of the advisory committee with the consent of all members of the advisory committee in an ex-officio capacity. The primary function of the committee shall be to further the cooperative effort among the parties regarding use of the facility for major spectator events or other appropriate activities. The committee shall make recommendations to the administration of South Dakota State University on the matters listed below and other issues as the committee deems appropriate:
 - a) Short and long-term scheduling plans for the use of the Performing Arts Center by the School District, City, and University;
 - b) Annual identification of community arts, cultural, music or other groups eligible for sponsorship by the City of Brookings for use of the facility at actual cost. This list will be reviewed and revised on an annual basis; and
 - c) Improvements in operation policies and procedures which will enhance utilization of the Center.

Only members of the Advisory Committee may formally vote to forward a recommendation. In the event of disagreement, the administration of South Dakota State University shall be the final deciding authority.

7. Any use of the Performing Arts Center by the City of Brookings or the Brookings School District shall not result in any liability to South Dakota State University, the South Dakota Board of Regents, or the State of South Dakota arising from the use of the facility. Any liability that may arise from the use of the Performing Arts Center shall be the sole responsibility of the sponsors of any such event or activity scheduled for the facility.
8. The parties hereby agree that the Performing Arts Center expansion project will be completed in accordance with the federal ADA provisions and that the City of Brookings ADA Policy adopted November 25, 2003, will be followed in the SDSU Performing Arts Center expansion construction project as follows:
 - a. The City will review and approve the project drawings prior to project bid date. The City will review and approve change orders that have an ADA component for conformity with City ADA requirements and as set forth in Section 8 herein. Thereafter, all reviews and approvals by City shall only be for review that the said City ADA requirements contained in the approved project drawings and change orders were completed. City shall provide its review and feedback within the two (2) week review period that is standard in University and State Engineer processes. Construction and all installations must adhere to the ADA approved plans prepared by the architect and the architect's agent. The City shall participate in the Design Development Phase of the project for ADA review as to specifications previously approved.
 - ~~b. The City shall provide \$6,000,000 in funding towards the Performing Arts Center expansion project as follows: (1) \$5,000,000 in funding upon proper approval and execution of this agreement; (2) A progress payment of \$500,000 shall be made by the City upon the end of the Design Development Phase; and (3) the remaining \$500,000 shall be paid by City to University at completion of the project City ADA requirements in conformity with the approved bid drawings and change orders.~~

The City shall provide, or cause to be provided, \$5.5 million within 90 days of execution of this agreement. The remaining \$500,000 shall be paid, within 30 days of City satisfaction or compliance with applicable ADA Policies, to include the City's ADA Policy requirements as set forth in Section 8C, including the City's specific ADA requirements for Family Restrooms, Platform Lifts and Automatic Door Openers.

- c. The City's specific ADA requirements for Family Restrooms, Platform Lifts, and Automatic Door Openers as set forth in the above referenced City's ADA policy will be complied with to the extent they are not otherwise required by the federal ADA. The City may advise the University regarding other "Best Practices" standards of the City's ADA policy referenced herein that are not required by the federal ADA, however, the University shall consider this advisory information and may decide whether to accept the Best Practice as the construction standard, or defer to the requirements of the federal ADA.
- d. Upon final acceptance and occupancy of the building by the University, all ADA grievances and complaints shall be submitted to the University Title IX/EO Coordinator for handling in compliance with South Dakota Board of Regents and University policies and procedures. Referrals from the University may be made to the City process, if required, on a case by case basis.

This Memorandum of Understanding does not constitute a binding contract concerning the specific use of the facility for any specific events, but it does impose an obligation and duty upon the State of South Dakota to provide for a right of access to the facility in the manner contractually established herein.

This Memorandum of Understanding may be terminated by the South Dakota Board of Regents for failure of appropriation which shall result in no liability to the State, the Board of Regents, or South Dakota State University for said termination. At the expiration of twenty-five (25) years as set forth in section 4 herein, this Memorandum of Understanding may be unilaterally terminated by the South Dakota Board of Regents without penalty or liability.

This Memorandum of Understanding for the intergovernmental cooperation and use of the facility being constructed on the campus of South Dakota State University is executed by South Dakota State University and is accepted and agreed to by the Board of Regents and the City of Brookings.

THIS DOCUMENT WAS SIGNED BY REPRESENTATIVES OF:
SOUTH DAKOTA BOARD OF REGENTS
CITY OF BROOKINGS
BROOKINGS PUBLIC SCHOOL DISTRICT

Brookings Marketplace.

A motion was made by Mayor Reed, seconded by Council Member Niemeyer, to direct the City Manager to begin negotiations on a Comprehensive Development Agreement for the SDDOT Land with Bender Company. Public Comment: Al Kurtenbach, John Mills, Andy Johnson, and Mason Wheeler. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Reed, Kidwiler, Bacon, and Wendell.

Budget discussion. None.

Items for future discussion.

A motion was made by Mayor Reed, seconded by Council Member Hansen, to ask staff to present a process for Recreation Facility Planning on the September 20 Study Session. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Hansen, Reed, Kidwiler, Bacon, and Wendell.

Adjourn. A motion was made by Council Member Wendell, seconded by Council Member Corbett, to adjourn the meeting at 7:16 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

Tim Reed, Mayor

ATTEST:

Shari Thornes, City Clerk