

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance
Consent

AGENDA ITEM: 5 – M
DATE: March 29-30, 2023

SUBJECT

City of Brookings Easements – SDSU

CONTROLLING STATUTE, RULE, OR POLICY

SDCL §§ [5-2-10](#) & [5-2-11](#)

BACKGROUND / DISCUSSION

South Dakota State University (SDSU) requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of various easement to the City of Brookings. Brookings Municipal Utilities has requested various easements on SDSU property as they upgrade the sanitary sewer running under University Boulevard and SDSU property. SDSU will benefit from improved median development and road resurfacing during the project, as well as from the upgraded sanitary sewer. This request includes permanent easements for utility corridors and temporary easements to accommodate construction and road resurfacing.

IMPACT AND RECOMMENDATION

SDSU requests the Board of Regents approve proceeding with the requested permanent and temporary easements for the above-mentioned purposes.

Staff recommends approval.

ATTACHMENTS

- Attachment I – Resolution Requesting the Grant of an Easements
- Attachment I, Exhibit I – Draft Temporary Construction Easement – 22nd St.
- Attachment I, Exhibit II – Draft Temporary Construction Easement – Lift Station
- Attachment I, Exhibit III – Draft Temporary Construction Easement – University Blvd.
- Attachment I, Exhibit IV – Draft Permanent Easement – Utilities
- Attachment I, Exhibit V – Draft Permanent Easement – Access

DRAFT MOTION 20230329_5-M:

I move to approve and adopt the Resolution set forth in Attachment I, requesting the Commissioner of School and Public Lands to proceed with the easements as stated therein.

RESOLUTION

Resolution requesting the grant of easements through, under, in, on and across portions of land occupied by South Dakota State University for the use and benefit of the City of Brookings.

The South Dakota Board of Regents (hereinafter referred to as “BOR”), on behalf of South Dakota State University, pursuant to the authority vested in BOR under SDCL § 5-2-11 and other applicable law, hereby requests the Commissioner of School and Public Lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to grant to the City of Brookings, and/or its Municipal Utility Board, various temporary and permanent easements to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate utilities, and to provide the requisite access associated therewith, through, under, on and across the following described real estate within the City of Brookings, Brookings County, South Dakota:

That portion of the NE ¼ of Section 24, Township 110 North, Range 50 West, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein; and

That portion of the N ½ of the SE ¼ of Section 24, Township 110 North, Range 50 West, as further shown in Exhibit A to Exhibit II, a copy of which is attached hereto and incorporated herein; and

That portion of the N ½ of the SE ¼ of Section 24, Township 110 North, Range 50 West, as further shown in Exhibit A to Exhibit III, a copy of which is attached hereto and incorporated herein; and

That portion of the N ½ of the SE ¼ of Section 24, Township 110 North, Range 50 West, as further shown in Exhibit A to Exhibit IV, a copy of which is attached hereto and incorporated herein; and

That portion of the NE ¼ of Section 24, Township 110 North, Range 50 West, as further shown in Exhibit A to Exhibit V, a copy of which is attached hereto and incorporated herein; and

BOR requests that the easement be generally consistent with the drafts attached hereto as Exhibits I – V, without restricting the ability of the parties to further revise the easements to effectuate their intended purposes before executing and filing the same, to include adjusting the easement locations to accommodate the final construction plans.

Dated this ____ day of March, 2023

SOUTH DAKOTA BOARD OF REGENTS

By _____

Pam Roberts
President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at its meeting conducted on the ____ day of March, 2023, 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 ____ day of March, 2023

SOUTH DAKOTA BOARD OF REGENTS

By _____

Secretary

Prepared by:
Banner Associates, Inc.
409 22nd Avenue S.
Brookings, SD 57006

STATE OF SOUTH DAKOTA TEMPORARY EASEMENT

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the “State”] and the City of Brookings, by and through its Municipal Utility Board, 520 3rd Street, Suite 230, Brookings, South Dakota, 57006 [“the City”].

WHEREAS, The City is desirous of retaining a temporary easement for the construction of utilities, and all necessary and appurtenant structures, fixtures and controls across land belonging to the State, and the State is desirous of cooperating with the City for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the City, a temporary easement for the following described purposes: the right to utilities, and all necessary and appurtenant of structures, fixtures and controls associated with the Easement and construction of utilities, through, under, in, on and across the following legally described real estate within the City of Brookings, Brookings County, State of South Dakota (the “Easement Area”):

that portion of the NE ¼ of Section 24, Township 110 North, Range 50 West,

as more fully described Exhibit “A”, a copy of which is attached hereto and incorporated herein by this reference.

2. The easement shall expire on completion of the work.
3. The City agrees that any construction will not diminish nor interfere unnecessarily with the State’s use of its adjoining property and will not endanger nor injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

4. The City further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the utilities or structures installed by the City and associated with the operation and maintenance of said utilities or structures.
5. The right of way, utilities, or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.
6. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
7. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction of the utilities or structures installed by the City, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
8. The City further understands and agrees that the State has and retains the right to lease, sell, or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, 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, so long as they do not infringe upon the rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 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.
9. City shall maintain the surface area of the Easement shown in Exhibit "A" following execution of this Easement. The property which is the subject of this Easement shall be kept free of all obstructions including but not limited to buildings, walls, fences, debris, trees, shrubs, or landscaping if such use is incompatible with the Easement.
10. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State and the City pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and the City or their respective heirs, representatives, executors, administrators, successors and assigns.

11. This Easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of City 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 the State or any person or entity succeeding to its interest.

12. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

IN WITNESS WHEREOF, the parties have caused this Easement 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 _____, 2023.

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Brock Greenfield
Commissioner of School and Public Lands

CITY OF BROOKINGS

BY: _____
Paul Briseno
City Manager

ATTEST:

State of South Dakota)
 : SS.
County of Hughes)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that she executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
 : SS.
County of Hughes)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Brock Greenfield, Commissioner of School and Public Lands, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

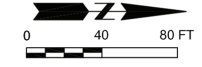
(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
 : SS.
County of Brookings)






On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Paul Briseno, City Manager of the City of Brookings, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

EXHIBIT A
TEMPORARY EASEMENT
 IN THE NE 1/4 OF SECTION 24-T110N-R50W,
 BROOKINGS COUNTY, SOUTH DAKOTA



LEGEND

-  MONUMENT FOUND
-  TEMPORARY EASEMENT
-  PROPERTY LINE
-  SECTION LINE
-  QUARTER LINE

NE 1/4
24-110-50

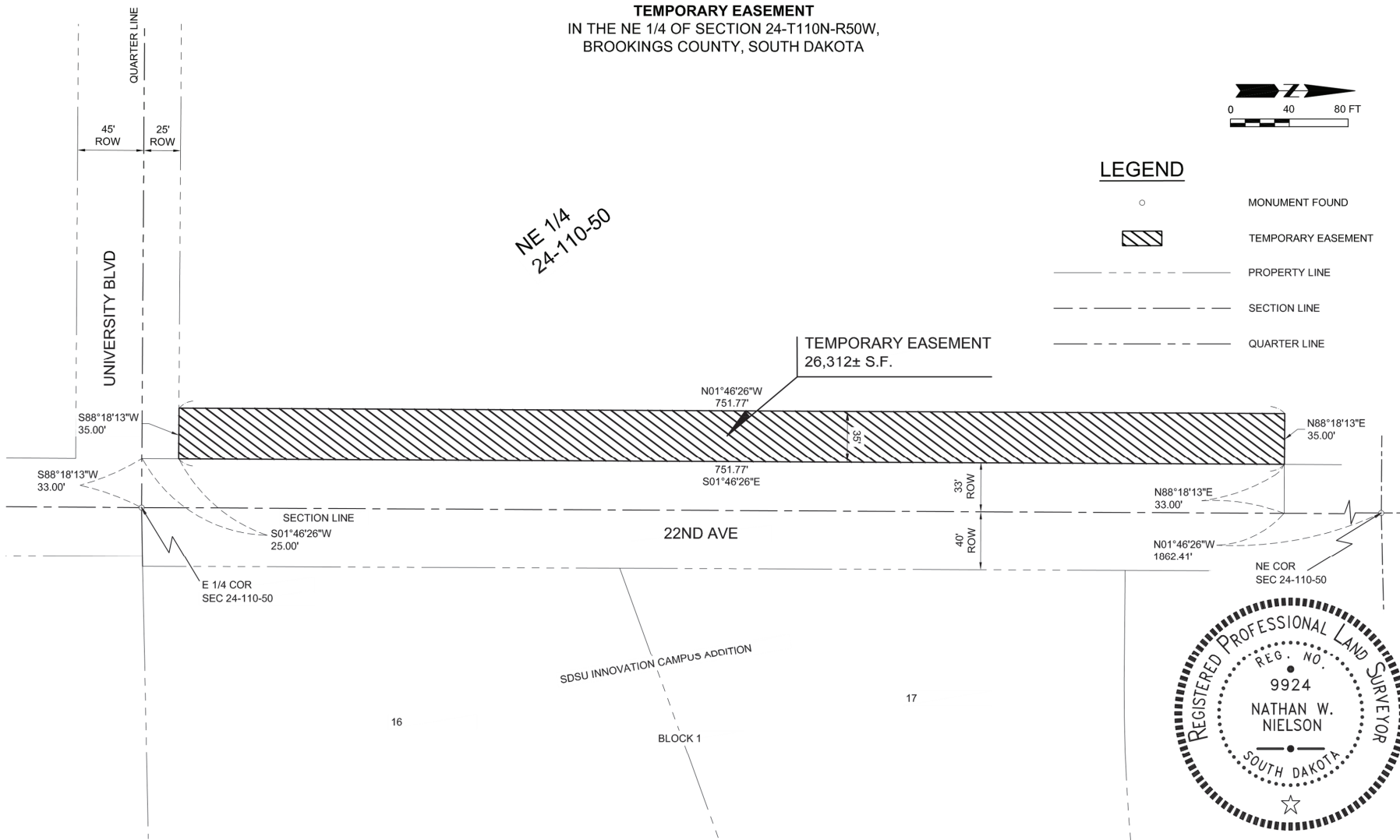


EXHIBIT A
 TEMPORARY EASEMENT
 BROOKINGS, SOUTH DAKOTA



PROJECT / SHEET TITLE:

JOB No.:	23755.00
DATE:	JANUARY 2023
DESIGNED BY:	JDB
CHECKED BY:	NWN
DRAWN BY:	SP

SHEET No.:

1 OF 1

Prepared by:
Banner Associates, Inc.
 409 22nd Avenue S.
 Brookings, SD 57006

STATE OF SOUTH DAKOTA TEMPORARY EASEMENT

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the “State”] and the City of Brookings, by and through its Municipal Utility Board, 520 3rd Street, Suite 230, Brookings, South Dakota, 57006 [“the City”].

WHEREAS, The City is desirous of retaining a temporary easement for the construction of utilities, and all necessary and appurtenant structures, fixtures and controls across land belonging to the State, and the State is desirous of cooperating with the City for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the City, a temporary easement for the following described purposes: the right to utilities, and all necessary and appurtenant of structures, fixtures and controls associated with operation and maintenance of Easement and construction of utilities, through, under, in, on and across the following legally described real estate within the City of Brookings, Brookings County, State of South Dakota (the “Easement Area”):

that portion of the North ½ of the SE ¼ of Section 24, Township 110 North, Range 50 West,

as more fully described in Exhibit “A”, a copy of which is attached hereto and incorporated herein by this reference.

2. The easement shall expire on completion of the work.
3. The City agrees that any construction will not diminish nor interfere unnecessarily with the State’s use of its adjoining property and will not endanger nor injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the

above described property for the purposes of effectuating the grant of and reserved rights in this easement.

4. The City further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the utilities or structures installed by the City and associated with the operation and maintenance of said utilities or structures.
5. The right of way, utilities, or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.
6. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
7. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction of the utilities or structures installed by the City, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
8. The City further understands and agrees that the State has and retains the right to lease, sell, or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, 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, so long as they do not infringe upon the rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 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.
9. City shall maintain the surface area of the Easement shown in Exhibit "A" following execution of this Easement. The property which is the subject of this Easement shall be kept free of all obstructions including but not limited to buildings, walls, fences, debris, trees, shrubs, or landscaping if such use is incompatible with the Easement.

- 10. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State and the City pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and the City or their respective heirs, representatives, executors, administrators, successors and assigns.
- 11. This Easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of City 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 the State or any person or entity succeeding to its interest.
- 12. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

IN WITNESS WHEREOF, the parties have caused this Easement 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 _____, 2023.

STATE OF SOUTH DAKOTA

BY: _____

Kristi Noem
Governor

ATTEST:

Brock Greenfield
Commissioner of School and Public Lands

CITY OF BROOKINGS

BY: _____

Paul Briseno
City Manager

ATTEST:

State of South Dakota)
: SS.
County of Hughes)

On this _____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that she executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
: SS.
County of Hughes)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Brock Greenfield, Commissioner of School and Public Lands, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
: SS.
County of Brookings)

On this _____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Paul Briseno, City Manager of the City of Brookings, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

Prepared by:
Banner Associates, Inc.
 409 22nd Avenue S.
 Brookings, SD 57006

STATE OF SOUTH DAKOTA TEMPORARY EASEMENT

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WHEREAS, The City is desirous of retaining a temporary easement for the construction and replacement of a shared use path, across land belonging to the State, and the State is desirous of cooperating with the City for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the City, a temporary easement for the following described purposes: the right to construct and replace a shared use path associated with the Easement and construction of utilities, through, under, in, on and across the following legally described real estate within the City of Brookings, Brookings County, State of South Dakota (the “Easement Area”):

that portion of the N ½ of the SE ¼ of Section 24, Township 110 North, Range 50 West,

as more fully described in Exhibit “A”, a copy of which is attached hereto and incorporated herein by this reference.

2. The City agrees that any construction will not diminish nor interfere unnecessarily with the State’s use of its adjoining property and will not endanger or injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.
3. The right of way or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.

4. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
5. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction and replacement of the shared use path installed by the City, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
6. The City further understands and agrees that the State has and retains the right to lease, sell, or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, 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, so long as they do not infringe upon the rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 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.
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8. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State and the City pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and the City or their respective heirs, representatives, executors, administrators, successors and assigns.
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IN WITNESS WHEREOF, the parties have caused this Easement 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 _____, 2023.

STATE OF SOUTH DAKOTA

BY: _____

Kristi Noem
Governor

ATTEST:

Brock Greenfield
Commissioner of School and Public Lands

CITY OF BROOKINGS

BY: _____

Paul Briseno
City Manager

ATTEST:

State of South Dakota)
: SS.
County of Hughes)

On this _____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that she executed the same.

(SEAL)

Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
: SS.
County of Hughes)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Brock Greenfield, Commissioner of School and Public Lands, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL)

Notary Public – State of South Dakota
My Commission Expires: _____

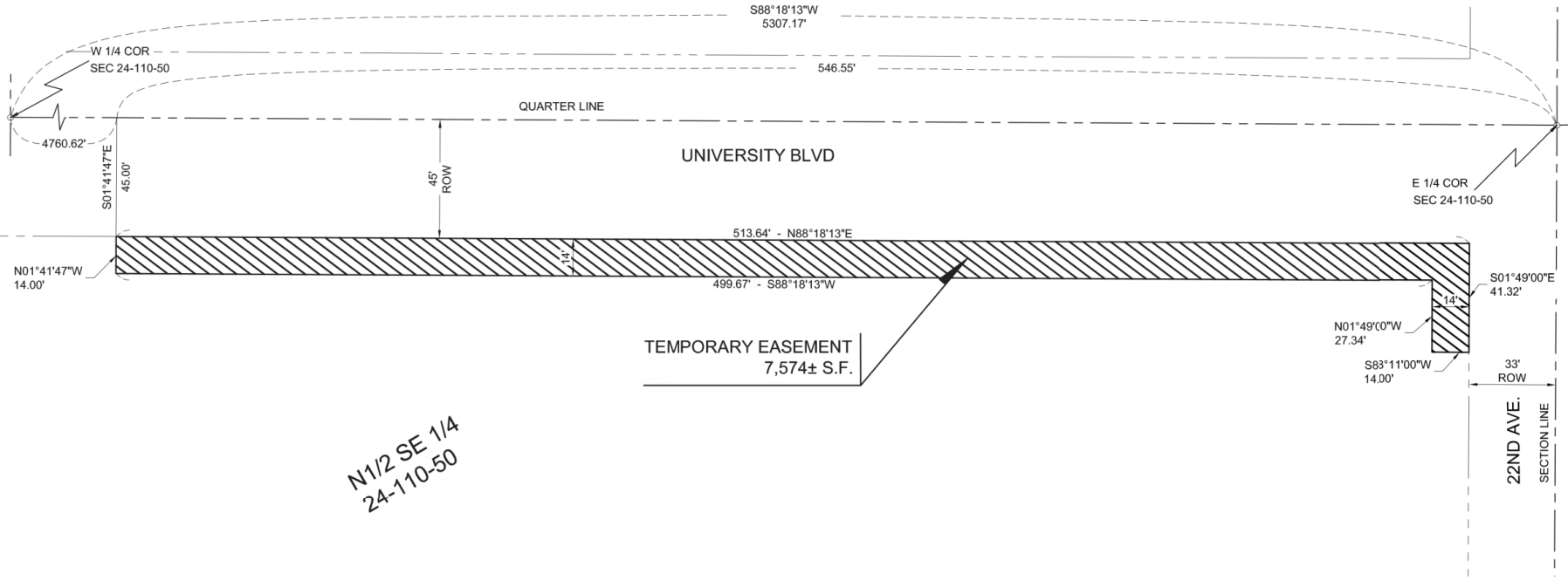
State of South Dakota)
: SS.
County of Brookings)

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(SEAL)

Notary Public – State of South Dakota
My Commission Expires: _____

EXHIBIT A
TEMPORARY EASEMENT
 IN THE N1/2 OF THE SE 1/4 OF SECTION 24-T110N-R50W,
 BROOKINGS COUNTY, SOUTH DAKOTA



N1/2 SE 1/4
24-110-50



LEGEND






-  MONUMENT FOUND
-  TEMPORARY EASEMENT
-  PROPERTY LINE
-  SECTION LINE
-  QUARTER LINE



EXHIBIT A
 TEMPORARY EASEMENT
 BROOKINGS, SOUTH DAKOTA

PROJECT/SHEET TITLE:
 JOB No.: 23755.00
 DATE: JANUARY 2023
 DESIGNED BY: JDB
 CHECKED BY: NWN
 DRAWN BY: SP

SHEET No.:
1 OF 1

Prepared by:
Banner Associates, Inc.
 409 22nd Avenue S.
 Brookings, SD 57006

STATE OF SOUTH DAKOTA PERMANENT UTILITY EASEMENT

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the “State”] and the City of Brookings, by and through its Municipal Utility Board, 520 3rd Street, Suite 230, Brookings, South Dakota, 57006 [“the City”].

WHEREAS, The City is desirous of retaining a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of utilities, and all necessary and appurtenant structures, fixtures and controls across land belonging to the State, and the State is desirous of cooperating with the City for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the City, a permanent right-of-way easement for the following described purposes: the right to construction, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate utilities, and all necessary and appurtenant of structures, fixtures and controls associated with operation and maintenance of Easement and utilities, through, under, in, on and across the following legally described real estate within the City of Brookings, Brookings County, State of South Dakota (the “Easement Area”):

that portion of the North ½ of the SE ¼ of Section 24, Township 110 North, Range 50 West,

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2. The City agrees that any construction will not diminish nor interfere unnecessarily with the State’s use of its adjoining property and will not endanger nor injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the above-described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. The City further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the utilities or structures installed by the City and associated with the operation and maintenance of said utilities or structures.
4. The right of way, utilities, or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.
5. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
6. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction, operation, maintenance, enlargement, upgrade, repair, alteration, removal, or replacement of the utilities or structures installed by the City and associated with the operation and maintenance of said utilities or structures, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
7. The City further understands and agrees that the State has and retains the right to lease, sell, or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, 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, so long as they do not infringe upon the rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 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.
8. In consideration of the Easement, the City will not impose special assessments on the State to pay for connection costs to the City that may be associated with the development of the above described area.
9. City shall maintain the surface area of the Easement shown in Exhibit "A" following execution of this Easement. The property which is the subject of this Easement shall be kept

free of all obstructions including but not limited to buildings, walls, fences, debris, trees, shrubs, or landscaping if such use is incompatible with the Easement.

- 10. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State and the City pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and the City or their respective heirs, representatives, executors, administrators, successors and assigns.
- 11. This Easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of City 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 the State or any person or entity succeeding to its interest.
- 12. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

IN WITNESS WHEREOF, the parties have caused this Easement 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 _____, 2023.

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Brock Greenfield
Commissioner of School and Public Lands

CITY OF BROOKINGS

BY: _____
Paul Briseno
City Manager

ATTEST:

State of South Dakota)
 : SS.
County of Hughes)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that she executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
 : SS.
County of Hughes)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Brock Greenfield, Commissioner of School and Public Lands, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
 : SS.
County of Brookings)

On this ____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Paul Briseno, City Manager of the City of Brookings, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL) _____
Notary Public – State of South Dakota
My Commission Expires: _____

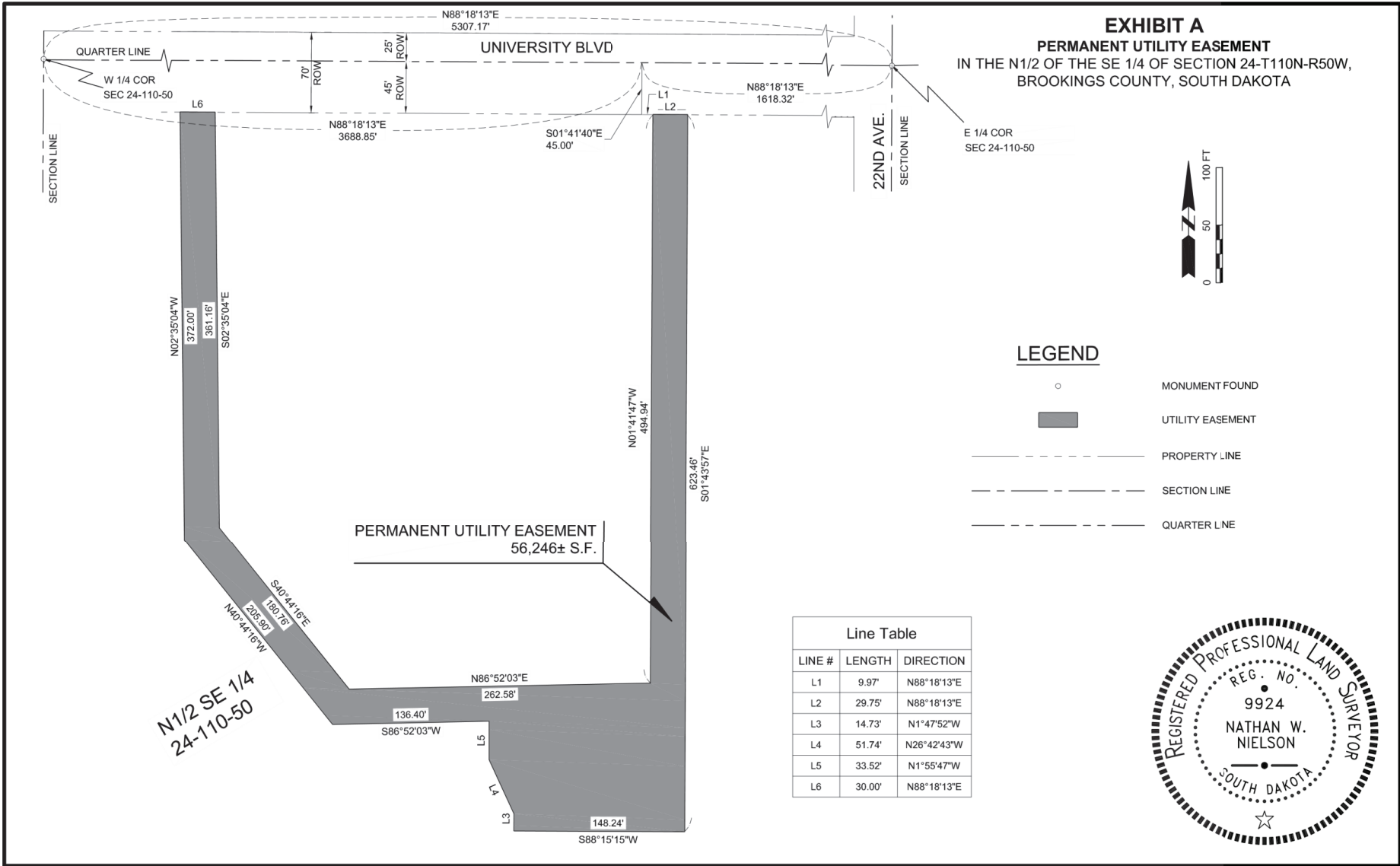







EXHIBIT A
PERMANENT UTILITY EASEMENT
 IN THE N1/2 OF THE SE 1/4 OF SECTION 24-T110N-R50W,
 BROOKINGS COUNTY, SOUTH DAKOTA



LEGEND

-  MONUMENT FOUND
-  UTILITY EASEMENT
-  PROPERTY LINE
-  SECTION LINE
-  QUARTER LINE

Line Table		
LINE #	LENGTH	DIRECTION
L1	9.97'	N88°18'13"E
L2	29.75'	N88°18'13"E
L3	14.73'	N1°47'52"W
L4	51.74'	N26°42'43"W
L5	33.52'	N1°55'47"W
L6	30.00'	N88°18'13"E



EXHIBIT A
 PERMANENT UTILITY EASEMENT
 BROOKINGS, SOUTH DAKOTA

PROJECT/SHEET TITLE:
 JOB No.: 23755.00
 DATE: JANUARY 2023
 DESIGNED BY: JDB
 CHECKED BY: NWN
 DRAWN BY: SP

SHEET No.:
1 OF 1

Prepared by:
Banner Associates, Inc.
 409 22nd Avenue S.
 Brookings, SD 57006

STATE OF SOUTH DAKOTA PERMANENT EASEMENT

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the “State”] and the City of Brookings, 520 3rd Street, Suite 230, Brookings, South Dakota, 57006 [“the City”].

WHEREAS, The City is desirous of retaining a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of a shared use path, across land belonging to the State, and the State is desirous of cooperating with the City for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the City, a permanent right-of-way easement for the following described purposes: the right to construction, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate a shared use path associated with operation and maintenance of Easement and utilities, through, under, in, on and across the following legally described real estate within the City of Brookings, Brookings County, State of South Dakota (the “Easement Area”):

that portion of the NE ¼ of Section 24, Township 110 North, Range 50 West,

as more fully described in Exhibit “A”, a copy of which is attached hereto and incorporated herein by this reference.

2. The City agrees that any construction will not diminish nor interfere unnecessarily with the State’s use of its adjoining property and will not endanger nor injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. The City further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the shared use path installed by the City and associated with the operation and maintenance of said shared use path.
4. The right of way, utilities, or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.
5. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
6. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction, operation, maintenance, enlargement, upgrade, repair, alteration, removal, or replacement of the shared use path installed by the City and associated with the operation and maintenance of said shared use path, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
7. The City further understands and agrees that the State has and retains the right to lease, sell, or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, 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, so long as they do not infringe upon the rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 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.
8. City shall maintain the surface area of the Easement shown in Exhibit "A" following execution of this Easement. The property which is the subject of this Easement shall be kept free of all obstructions including but not limited to buildings, walls, fences, debris, trees, shrubs, or landscaping if such use is incompatible with the Easement.
9. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State

and the City pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and the City or their respective heirs, representatives, executors, administrators, successors and assigns.

10. This Easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of City 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 the State or any person or entity succeeding to its interest.

11. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

IN WITNESS WHEREOF, the parties have caused this Easement 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 _____, 2023.

STATE OF SOUTH DAKOTA

BY: _____

Kristi Noem
Governor

ATTEST:

Brock Greenfield
Commissioner of School and Public Lands

CITY OF BROOKINGS

BY: _____

Paul Briseno
City Manager

ATTEST:

State of South Dakota)
: SS.
County of Hughes)

On this _____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that she executed the same.

(SEAL)

Notary Public – State of South Dakota
My Commission Expires: _____

State of South Dakota)
: SS.
County of Hughes)

On this _____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Brock Greenfield, Commissioner of School and Public Lands, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

(SEAL)

Notary Public – State of South Dakota
My Commission Expires: _____

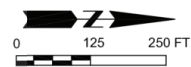
State of South Dakota)
: SS.
County of Brookings)

On this _____ day of _____, 2023, before me the undersigned Notary Public within aforesaid County and State, personally appeared Paul Briseno, City Manager of the City of Brookings, known to me to be the person described herein and who executed the within and foregoing instrument for the purposes therein contained and acknowledged to me that he executed the same.






(SEAL)

Notary Public – State of South Dakota
My Commission Expires: _____

EXHIBIT A
PERMANENT EASEMENT
 IN THE NE 1/4 OF SECTION 24-T110N-R50W,
 BROOKINGS COUNTY, SOUTH DAKOTA



LEGEND

-  MONUMENT FOUND
-  ACCESS EASEMENT
-  PROPERTY LINE
-  SECTION LINE
-  QUARTER LINE

NE 1/4
24-110-50

PERMANENT EASEMENT
29,485± S.F.

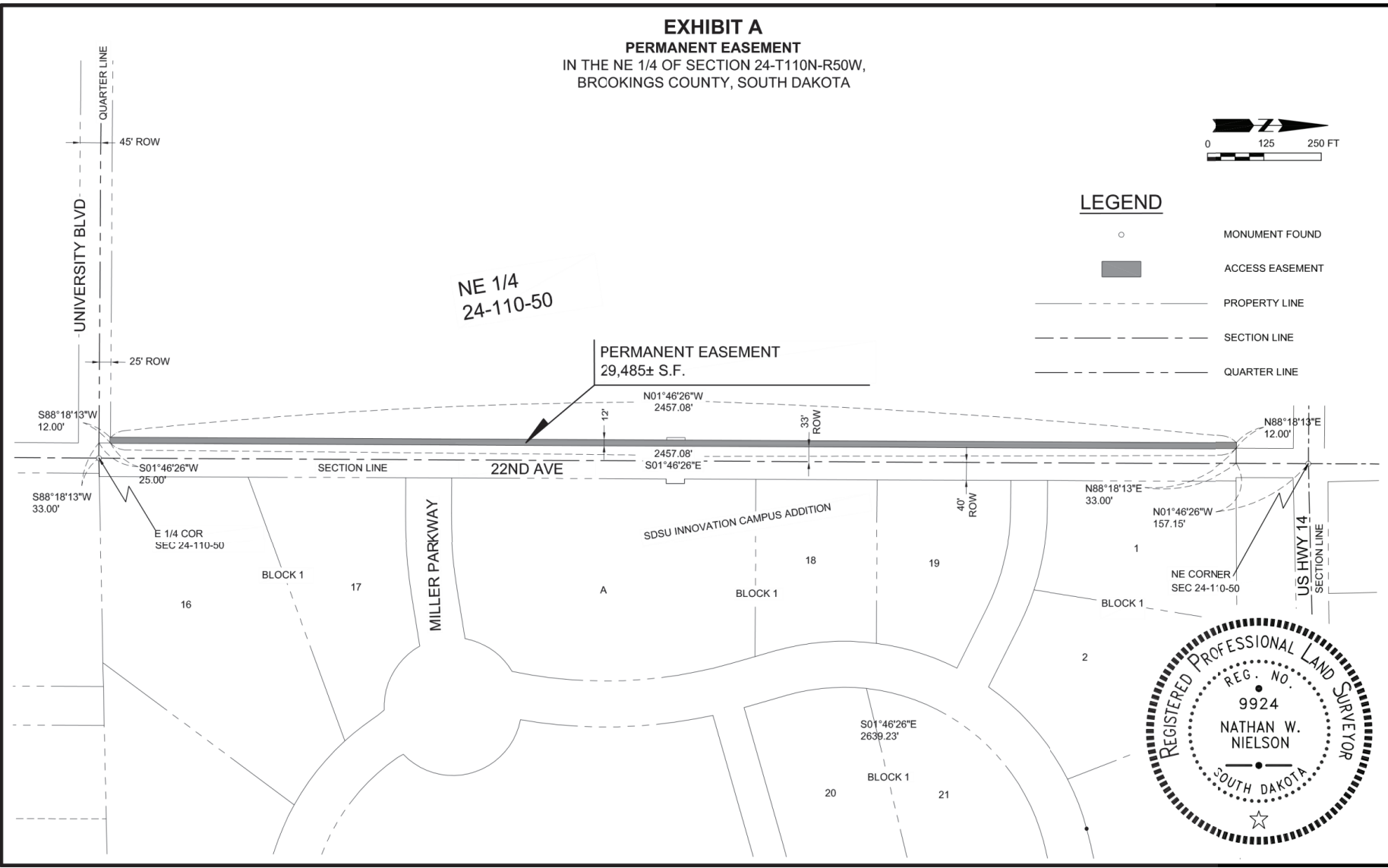


EXHIBIT A
 PERMANENT EASEMENT
 BROOKINGS, SOUTH DAKOTA

PROJECT/SHEET TITLE:
 JOB No.: 23755.00
 DATE: JANUARY 2023
 DESIGNED BY: JDB
 CHECKED BY: NWN
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SHEET No.:
1 OF 1