

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
PURCHASE AGREEMENT

Project No. NH 014A(28)40 PCN No. 06Y6 Parcel No. N/A
County Lawrence

This Agreement is entered into this _____ day of February 2025, by and between City of Deadwood, South Dakota, whose post office address is 108 Sherman St., Deadwood, SD 57732, hereinafter referred to as the CITY and the STATE OF SOUTH DAKOTA, acting by and through the Department of Transportation, hereinafter referred to as the STATE.

1. PURPOSE OF AGREEMENT.

The CITY desires to purchase parcels of real property from the STATE within the City of Deadwood, South Dakota for the construction and maintenance of one or more municipal parking lots. The STATE desires to purchase a parcel of real property from the CITY that is currently being utilized as a municipal parking lot within the City of Deadwood, South Dakota.

2. BACKGROUND

- A.** The STATE is the owner of real property in Deadwood, South Dakota located along Highway 85 within the city limits of Deadwood. This real property is legally described as:

Lot A1 in Lot H4 of the Wilmington Placer of MS 848, Lot H1 of Tract 1 of Lot 849-8 of the Cimbria Placer of MS 849, and containing a portion of the original US Highway 85 Right-of-Way in Section 14, Township 5 North, Range 3 East of the B.H.M., in the City of Deadwood, Lawrence County, South Dakota. (Contains 3.98 acres, more or less.)

Lot A1 in Lot H3 of the Wilmington Placer of MS 848, and containing a portion of the original US Highway 85 Right-of-Way in Section 13, Township 5 North, Range 3 East of the B.H.M., in the City of Deadwood, Lawrence County, South Dakota. (Contains 0.20 acre, more or less.)

Lot M2A of the Subdivision of Placer 107, formerly Lot M and Lot M-2 of the Subdivision of Placer 107, in the S1/2 of Section 27, Township 5 North, Range 3 East of the B.H.M., City of Deadwood, Lawrence County, South Dakota. (Contains 0.67 acre)

Lot 1 being a portion of Hunter, M.S. 1295, all located in the City of Deadwood, Lawrence County, South Dakota. (Contains 0.55 acre)

Lot S Shamrock Subdivision, Pluma Area; and Lot M-1 of the Subdivision of Placer 107 Norther of the right of way of Highway 85 that lies westerly of the main track of the Chicago, Burlington and Quincy Railroad (formerly the Deadwood Central Railroad) in Pluma Area; all located in Deadwood, Lawrence County, South Dakota. (Contains 0.12 acre)

Lot H1 in Lot S of the Shamrock Lots, consisting of a portion of M.S. 754 and M.S. 1295 and all of Lot M-1 of the Subdivision of M.S. 107; all located in the S1/2 of Section 27, Township 5 North, Range 3 East of the B.H.M., City of Deadwood, Lawrence County, South Dakota. (Contains 0.17 acre)

Lot M2B of the Subdivision of Placer 107, formerly Lot M and Lot M-2 of the Subdivision of Placer 107, in the S1/2 of Section 27, Township 5 North, Range 3 East of the B.H.M., City of Deadwood, Lawrence County, South Dakota. (Contains 0.51 acre)

Lot H1 in Lot M and Lot M-2 of the Subdivision of Placer 107, City of Deadwood, Lawrence County, South Dakota. (Contains 0.05 acre)

These parcels of real property will be referred to as the "State Property" throughout this Agreement.

- B.** The CITY is the owner of real property in Deadwood, South Dakota, which is currently being maintained and operated as a municipal parking lot, and is legally described as:

Outlots 3, 4, and 5 of M.S. 38, City of Deadwood, Lawrence County, South Dakota. EXCEPTING therefrom Lot H-1, as shown on plat filed in Plat Book 4 on Page 383; EXCEPTING therefrom Lot H-2, as shown on the plat filed in Plat Book 5 on Page 38; EXCEPTING therefrom Lot H-3, as shown on the plat filed in Plat Book 5 on Page 53.

This parcel of real property will be referred to as the "City Property" throughout this Agreement.

3. SALE OF STATE PROPERTY TO CITY

A. Offer and Acceptance

The CITY offers to purchase, and the STATE agrees to sell, at a price and upon the terms set forth in this Agreement, the STATE'S interest in the State Property described above.

B. Payment

The CITY will pay the STATE the purchase price of Seven Hundred Seventy-Nine Thousand Dollars (\$779,000.00). The CITY will submit payment to STATE on or before closing, which shall occur by February 28, 2025.

C. Possession

The STATE will maintain possession of the State Property until the STATE has received the purchase price, in full, the STATE has signed this Agreement, and this transaction is closed. The parties to this Agreement anticipate that the transaction will be closed on or before February 28, 2025.

D. Conveyance

Upon full payment of the purchase price, the STATE will convey, or caused to be conveyed, all of the STATE'S right, title, and interest in and to the State Property, if any, to the CITY by quitclaim deed, subject to any visible and recorded easements, exceptions, and reservations of record, and in accordance with the terms, conditions, and reservations contained in this Agreement. The deed from the STATE to the CITY will include the following provisions:

Grantee further understands and accepts the Real Property in an "AS IS, WHERE IS" condition and subject to all faults of every kind and nature whatsoever, whether latent or patent and whether now or hereafter existing. Grantor will not be obligated to do any restoration, repairs, removal, remediation, monitoring, or other work in

connection with the Real Property, and Grantor will not be liable for any restoration, repairs, removal, remediation, monitoring, or other work necessary to cause the Real Property to meet any applicable laws, ordinances, requirements, limitations, restrictions, rules, regulations, or codes, or be suitable for any particular use. Grantee will indemnify Grantor against any liability, claims, suits, actions, damages, penalties, fines, costs, and expenses, including attorneys' and consultants' fees, incurred or arising directly or indirectly from or in connection with any such restoration, repairs, removal, remediation, monitoring, or other work, including injury to, death of, loss of, or damage to property of Grantee or any third party. Grantee specifically assumes the risk that hazardous substances and contaminants may be present on the property, and indemnifies, holds harmless, and hereby waives, releases, and discharges forever the Grantor from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties, and judgments arising from or in any way related to the condition of the property or presence of any hazardous substances or contaminants in, on, or under the Real Property. This indemnity specifically includes the obligation of Grantee to remove, close, remediate, reimburse, or take other actions requested or required by any governmental agency concerning any hazardous substances or contaminants on the Real Property.

This Deed does not carry with it any implied covenants whatsoever, including any covenant that Grantor has good right to convey any interest in the Real Property to Grantee. Grantee understands and accepts the Real Property subject to all encumbrances, covenants, conditions, and restrictions, whether of record or not.

The provisions of this deed will be covenants running with the land binding upon and inuring to the benefit of Grantor and Grantee and their respective successors and assigns.

E. Natural Resources

The STATE reserves all rights to all deposits of coal, ores, metals, and other minerals, asphaltum, oil, gas, and other like substance, 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, together with the right of access at all times to exercise said right.

The deed from the STATE to the CITY will contain the following provision:

It is expressly understood that the Grantor reserves all rights to all deposits of coal, ores, metals, and other minerals, asphaltum, oil, gas, and other like substance, 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.

4. SALE OF CITY PROPERTY TO STATE

A. Offer and Acceptance

The STATE intends to purchase, and the CITY agrees to sell, at a price and upon the terms set forth in this Agreement, the CITY'S interest in the City Property described above.

B. Payment

The Parties agree that the purchase price will equal the total appraised value of the City Property, as will be determined by an appraisal ordered by STATE. Upon full execution of this Agreement, STATE will an order the appraisal of the City Property. Upon receipt of the final appraisal report, STATE will provide a copy to the CITY. Within thirty (30) days of the receipt of the final appraisal

report, STATE will provide to CITY, in writing, whether it elects to complete the sale of the City Property. If the STATE elects to complete the sale of the City Property, the STATE will pay the CITY the purchase price within sixty (60) days from the date that the election was provided to CITY.

C. Conveyance

Upon full payment of the purchase price for the City Property, the CITY will convey, or caused to be conveyed, good and marketable title in and to the described City Property, including subsurface rights, to the STATE by warranty deed, in accordance with the terms, conditions, and reservations contained in this Agreement.

D. Possession

After the City Property is conveyed to STATE, the CITY will maintain possession of the City Property until a future date to be determined by the STATE in its sole and absolute discretion. The STATE will take possession of the City Property no sooner than January 1, 2028. The STATE will provide to the CITY notice of the selected date of transfer of possession at least 30 days prior thereto.

E. Maintenance and Repair

During the period of time in which the CITY remains in possession of the City Property, the CITY will be responsible for maintaining the City Property as a parking lot, including but not limited to, maintenance of the driving and parking surfaces, patching, crack sealing, and snow removal.

5. INDEMNIFICATION

The CITY agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief to the extent arising as a result of the CITY'S negligence, tortious acts, or intentional acts in performing services or its duties under this Agreement, including specifically any injuries or damage occurring on the City Property during the term of CITY's possession thereof. Notwithstanding the foregoing, the STATE may, in its sole discretion engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist CITY in the defense. If the STATE exercises this authority and CITY is determined to be liable, then the STATE is entitled to reimbursement of its reasonable attorney fees and costs in defending the suit in proportion to the degree of liability attributed to CITY in the proceeding. This section does not require CITY to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the STATE, its officers, agents or employees.

6. TRANSPORTATION COMMISSION APPROVAL.

This Agreement is contingent upon the approval of the sale of the State Property by the South Dakota Transportation Commission. In the event the Transportation Commission does not approve said sale, the Agreement will be null and void without any force or effect.

7. BINDING AGREEMENT. This Agreement constitutes the entire agreement between the parties for the sale and purchase of the subject real property and will bind and inure to the benefit of the Parties and their successors and assigns.

- 8. EXECUTION OF DOCUMENTS.** The parties each agree to execute any and all documents necessary to effectuate the terms and conditions of this Agreement.
- 9. PARTIAL INVALIDITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 10. CHOICE OF LAW/FORUM.** South Dakota law will govern this transaction. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- 11. VISUAL INSPECTION.** The CITY has made a complete visual inspection of the State Property and has knowledge as to the past uses of that real property. Based upon this inspection and knowledge, the CITY is aware of the condition of the subject real property and the CITY specifically acknowledges that the CITY is purchasing the State Property in an “as-is with all faults” basis. The CITY is not relying on any representation or warranties of any kind whatsoever from the STATE as to any matters concerning the subject real property, including the physical condition of the subject real property or any defects, the presence of any hazardous substances, wastes, contaminants in, on, or under the subject real property, the condition or existence of any above ground or underground structures or improvements in, on, or under the subject real property, the condition, or any leases, easements, or other agreements affecting the property. The CITY assumes the risk that hazardous substances and contaminants may be present on the subject real property, and waives, releases, and discharges forever the STATE from any and all present or future claims or demands, and any and all damages, loss, injury, claims, or costs, including fines, penalties, and judgments arising from or in any way related to the condition of the subject real property or presence of any hazardous substances or contaminants in, on, or under the property.
- 12. AMENDMENT.** This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and must be signed by an authorized representative of each of the parties.
- 13. HEADINGS.** The headings, titles, and subtitles in this Agreement have been inserted solely for convenient reference, and will be ignored in its construction.
- 14. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST**

The CITY (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek

independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the CITY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

15. AUTHORIZATION.

The CITY has designated its Mayor as the CITY’S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY’S Commission or Council minutes or resolution authorizing the execution of this Agreement by the Mayor as the CITY’S authorized representative is attached to this Agreement as Exhibit “A”.

This Agreement, consisting of seven (7) pages, has been made, signed, and sealed in duplicate by the STATE on this _____ day of _____, 2025.

CITY OF DEADWOOD

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Its: Mayor

Joel Jundt
Its: Secretary

Attest:

Approved as to Form:

City Clerk/Finance Officer

/s/ Shane M. Pullman
Special Assistant Attorney General

[ACKNOWLEDGEMENTS TO FOLLOW]

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF HUGHES)

On this the ____ day of _____, 2025, before me, _____, a notary public within and for said County and State, personally appeared Joel Jundt, Secretary of the Department of Transportation, State of South Dakota, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged he 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 SEAL) _____
NOTARY PUBLIC
My Commission Expires: _____

CITY ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF MEADE)

On this the ____ day of _____, 2025, before me, _____, a notary public within and for said County and State, personally appeared _____, Mayor of the City of Deadwood, South Dakota, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged he 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 SEAL) _____
NOTARY PUBLIC
My Commission Expires: _____