

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**  
**Consent**

**AGENDA ITEM: 6 – I**  
**DATE: July 31 – August 2, 2023**

\*\*\*\*\*

**SUBJECT**

**City of Madison Easement – DSU**

**CONTROLLING STATUTE, RULE, OR POLICY**

SDCL §§ [5-2-10](#) & [5-2-11](#)

**BACKGROUND/DISCUSSION**

Dakota State University (DSU) requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of an easement to the City of Madison for water, electrical utilities and all necessary appurtenant structures associated with the operation and maintenance thereof. The water and electrical utilities are associated with the construction of the athletics events center authorized in [HB1021](#) during the 2022 Legislative Session. The proposed easement is consistent with and supports DSU’s campus development plans on campus.

**IMPACT AND RECOMMENDATION**

DSU requests the Board of Regents approve proceeding with the requested electrical easement and adopt the Resolution set forth in Attachment I requesting the grant of an easement in favor of the City of Madison for the electrical utilities associated with the new athletics events center at DSU.

Staff recommends approval.

**ATTACHMENTS**

Attachment I – Resolution Requesting the Grant of an Easement  
Attachment I, Exhibit I – Draft Easement to the City of Madison

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**DRAFT MOTION 20230731\_6-I:**

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 easement as stated therein.

**RESOLUTION****Resolution requesting the grant of an easement through, under, in, on and across portions of land occupied by Dakota State University for the use and benefit of the City of Madison.**

The South Dakota Board of Regents (hereinafter referred to as “BOR”), on behalf of 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 Madison an easement to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate electrical utilities through, under, on and across the following described real estate in Lake County, South Dakota:

The identified strip of land 10 feet wide in the North 720 feet of the West 1504 feet of the South 1473 feet of the Northwest Quarter of Section 5, Township 106 North, Range 52 West of the 5<sup>th</sup> P.M., in Lake County, South Dakota, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein; and

The identified portion in Lot 1 in Block 1 DSU Foundation Addition to the City of Madison, Lake County, South Dakota, as further shown in Exhibit B to Exhibit I, a copy of which is attached hereto and incorporated herein; and

BOR requests that the easement be generally consistent with the draft attached hereto as Exhibit I, without restricting the ability of the parties to further revise the easement to effectuate its intended purpose before executing and filing the same, to include adjusting the easement location to accommodate the final construction plans.

Dated this \_\_\_\_ day of August, 2023

**SOUTH DAKOTA BOARD OF REGENTS**

By \_\_\_\_\_

Tim Rave  
President

Certification:

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

SOUTH DAKOTA BOARD OF REGENTS

By \_\_\_\_\_

Doug Morrison  
Secretary

**This document prepared by:  
Office of School and Public Lands  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
(605)773-3303**

**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 "Grantor") and the City of Madison, 116 W. Center Street, Madison, South Dakota, 57042 (the "Grantee").

WHEREAS, the Grantee is desirous of acquiring a permanent Easement, as depicted in Exhibit A attached hereto, for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of water and electrical utilities, and all necessary and appurtenant structures, fixtures and controls across land belonging to the Grantor, and the Grantor is desirous of cooperating with the Grantee 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 Grantor hereby grants and conveys to the Grantee a permanent a right-of-way Easement for the following described purposes: the right to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate electrical utilities, and all necessary and appurtenant of structures, fixtures and controls, through, under, in, on and across the following legally described real estate within Lake County, State of South Dakota (the "Easement"):

The identified strip of land 10 feet wide in in the North 720 feet of the West 1504 feet of the South 1473 feet of the Northwest Quarter of Section 5, Township 106 North, Range 52 West of the 5<sup>th</sup> P.M., Lake County, South Dakota; and

The identified portion in Lot 1 in Block 1 of DSU Foundation Addition to the City of Madison, in Lake County, South Dakota.

As more fully described on Exhibit A and Exhibit B attached hereto and incorporated herein by reference.

2. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the Grantor to continue use of any existing utilities, access, or Grantor infrastructure. Existing utilities, access, or infrastructure may be relocated with Grantor permission at the Grantee's expense.

3. The Grantee agrees that any construction will not interfere unnecessarily with the Grantor's use of its adjoining property and will not endanger or injure any improvements thereon. Grantor reserves the right to utilize the property for all purposes not inconsistent with the Easement rights herein conveyed. Grantor or Grantee may enter upon the above-described property for the purposes of effectuating the grant of and reserved rights in this Easement.

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. The Grantee further understands and agrees, that to the extent provided by South Dakota law it shall be liable for all damages caused by the construction, operation, maintenance, enlargement, upgrade, repair, alteration, removal or replacement of the street/highway(s), drainage, water, sanitary sewers, and other utilities or structures installed by the Grantee and damages associated with the Grantee's operation and maintenance of the street/highway improvements and the Grantee agrees to indemnify, defend, and hold the Grantor harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Grantee. The Grantee may require contractors and permittees, to defend, indemnify and hold the Grantee 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 Grantor's or Grantee's sovereign immunity.

6. 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.

7. Should the above-described real property granted by this Easement cease to be used for the purpose stated herein for two (2) consecutive years, this Easement reverts to the State of South Dakota or its successors or assigns.

8. The Grantor has and retains the right to lease, sell, or otherwise convey the property or any party thereof, subject to the terms of this Easement, provided, however, that this Easement shall remain in full force and effect until the expiration of the terms hereof notwithstanding such a lease, sale or conveyance. This Easement is also subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances provided by the South Dakota Constitution Art. VIII, §19, South Dakota Codified Law 5-7-3 to 5-7-6, inclusive, and South Dakota Codified Law § 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. This agreement and attachments shall constitute the entire agreement between Grantor and Grantee. This agreement supersedes any other written or oral agreements between Grantor and Grantee. This agreement can be modified only in writing and signed by the Grantor and Grantee 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 Grantee 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 Grantor or any person or entity succeeding to its interest.

11. In consideration of this Easement, the Grantee will not impose special assessments on the Grantor to pay for connection costs to the Grantee that may be associated with the development of the above-described area.

12. This Easement shall be governed by and 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 STATE OF SOUTH DAKOTA has caused this Instrument 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.

APPROVED BY:

GRANTOR  
STATE OF SOUTH DAKOTA

ATTEST BY:  
OFFICE OF SCHOOL AND PUBLIC LANDS

By: \_\_\_\_\_

\_\_\_\_\_

Kristi Noem, Governor

Brock Greenfield, Commissioner

STATE OF SOUTH DAKOTA)  
  ) ss  
COUNTY OF HUGHES          )

Be it remembered that on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me a Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person who described in, and who executed the within and forgoing instrument and acknowledged to me that executed the same.

Notary Seal

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expires

STATE OF SOUTH DAKOTA)  
 ) ss  
COUNTY OF HUGHES )

Be it remembered that on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me a Notary Public within aforesaid County and State, personally appeared Brock Greenfield, Commissioner, known to me to be the person who described in, and who executed the within and forgoing instrument and acknowledged to me that executed the same.

\_\_\_\_\_  
Notary Public

Notary Seal

\_\_\_\_\_  
Commission Expires

GRANTEE  
CITY OF MADISON  
A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF SOUTH DAKOTA)  
 ) ss  
COUNTY OF LAKE )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of the City of Madison, and that s/he, as \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Madison, as \_\_\_\_\_.

Notary Seal

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Notary Public – State of SD

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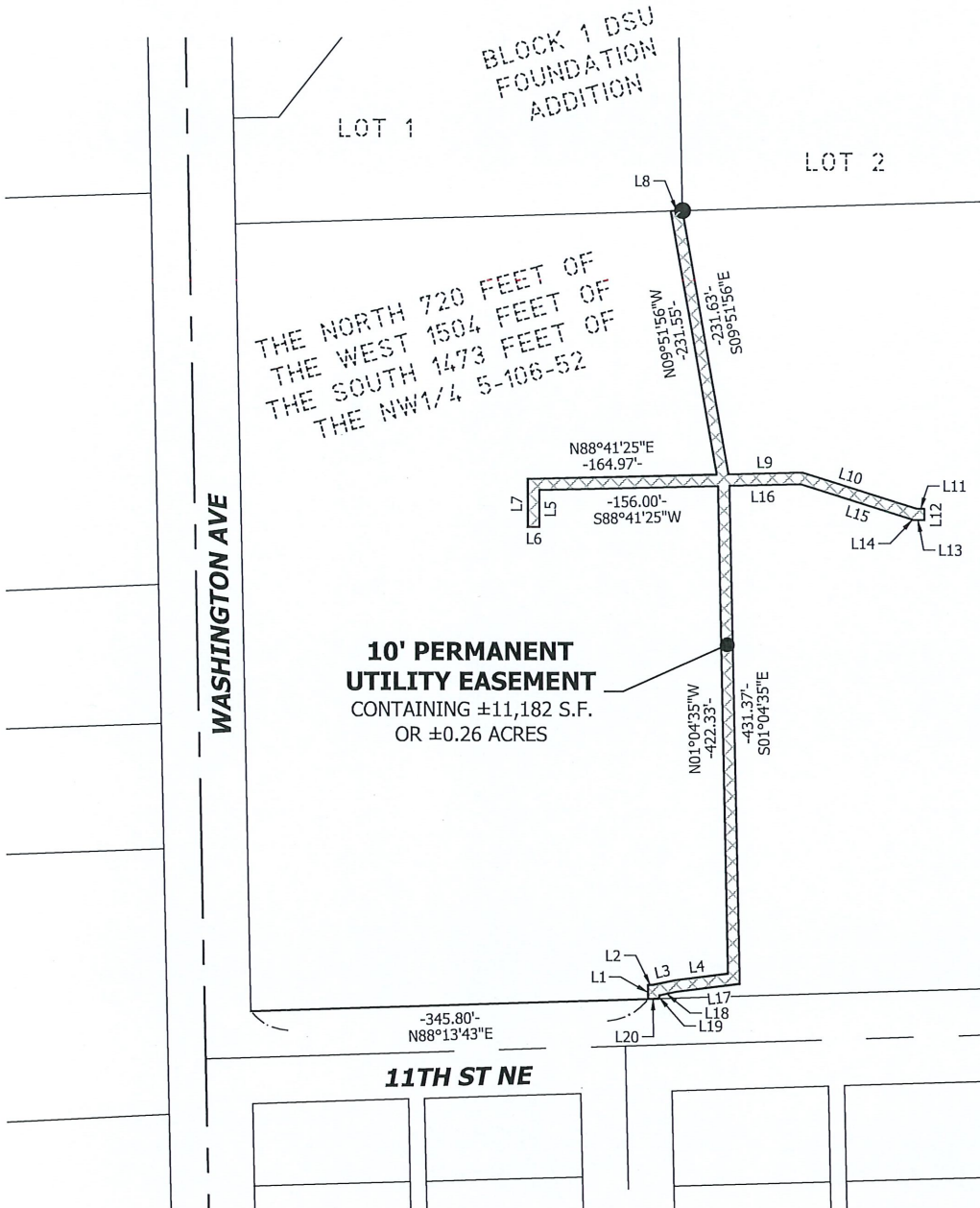
Commission Expires



# EXHIBIT A

SHOWING A PERMANENT UTILITY EASEMENT IN THE NORTH 720 FEET OF THE EAST ONE HALF OF THE WEST 1504 FEET OF THE SOUTH 1473 FEET OF THE NORTHWEST ONE QUARTER OF SECTION 5, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., LAKE COUNTY, SOUTH DAKOTA

## PERMANENT UTILITY EASEMENT



| LINE TABLE |         |              |
|------------|---------|--------------|
| LINE #     | LENGTH  | BEARING      |
| L1         | 12.07'  | N00°00'00\"E |
| L2         | 3.86'   | N90°00'00\"E |
| L3         | 20.31'  | N78°09'31\"E |
| L4         | 46.72'  | N82°55'30\"E |
| L5         | 31.94'  | S00°00'00\"E |
| L6         | 10.00'  | N90°00'00\"W |
| L7         | 41.72'  | N00°00'00\"E |
| L8         | 10.11'  | N88°14'50\"E |
| L9         | 64.32'  | N88°41'25\"E |
| L10        | 104.02' | S72°34'50\"E |
| L11        | 6.09'   | N90°00'00\"E |
| L12        | 10.00'  | S00°00'00\"E |
| L13        | 10.00'  | N90°00'00\"W |
| L14        | 0.75'   | N00°00'00\"E |
| L15        | 101.41' | N72°34'50\"W |
| L16        | 61.98'  | S88°41'25\"W |
| L17        | 55.31'  | S82°55'30\"W |
| L18        | 15.72'  | S78°09'31\"W |
| L19        | 2.83'   | S00°00'00\"E |
| L20        | 10.00'  | S88°13'43\"W |

**10' PERMANENT UTILITY EASEMENT**  
CONTAINING ±11,182 S.F.  
OR ±0.26 ACRES

**NOTES:**

1. BASIS OF BEARINGS FOR THIS EASEMENT IS UTM ZONE 14 NORTH.
2. SURVEY WAS DONE WITHOUT BENEFIT OF A TITLE SEARCH.

**LEGEND:**

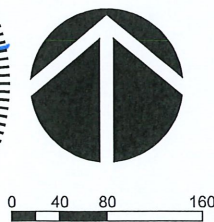
FOUND 5/8\" REBAR

EASEMENT

PREVIOUSLY PLATTED DIMENSION (100.0')

**PREPARED BY:**

STOCKWELL ENGINEERS, INC.  
801 N Phillips Avenue, Suite 100  
Sioux Falls, SD  
Phone: 605-338-6668



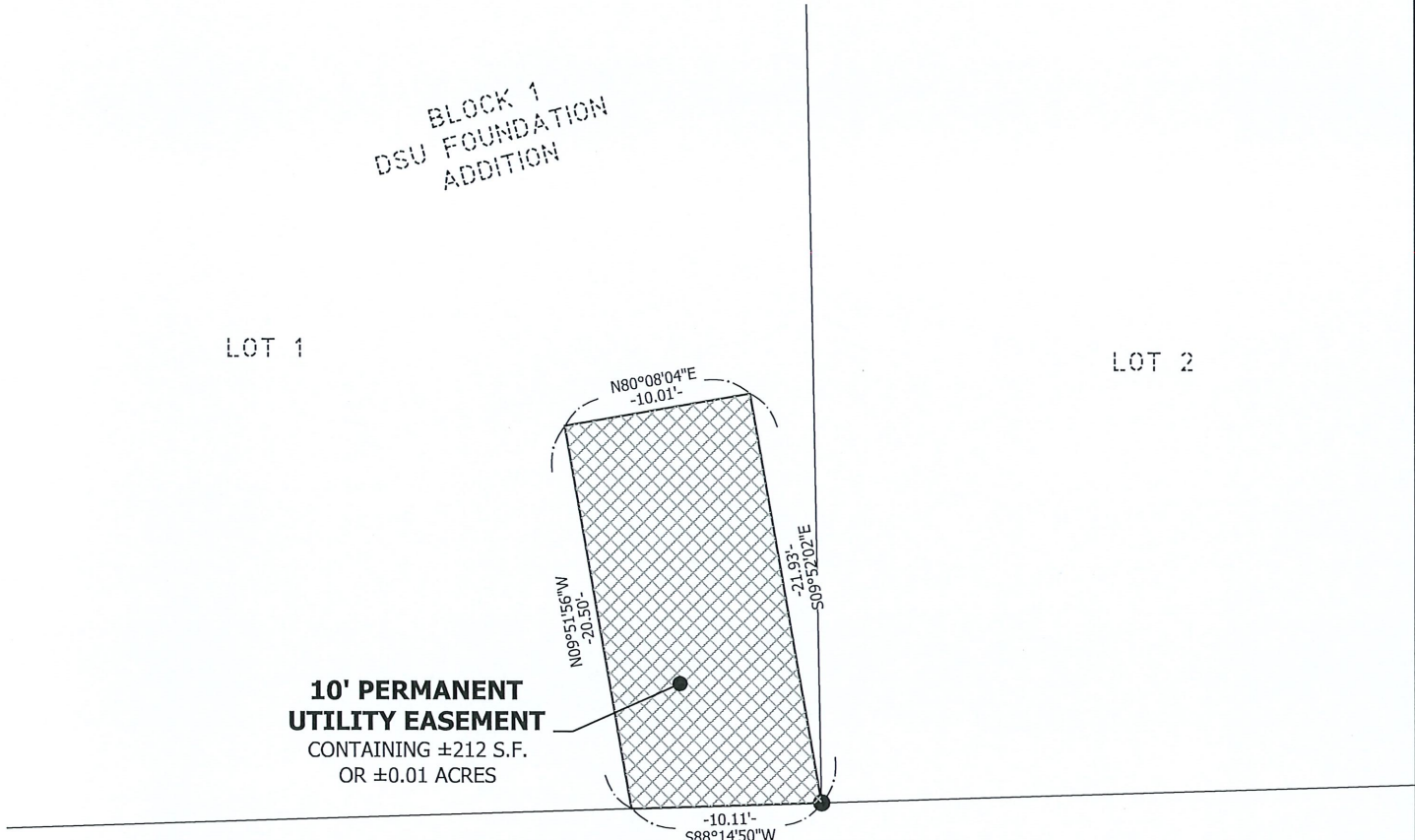
**KEY MAP**



# EXHIBIT B

SHOWING A PERMANENT UTILITY EASEMENT IN LOT 1 IN BLOCK 1 OF DSU FOUNDATION ADDITION TO THE CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

## PERMANENT UTILITY EASEMENT



**10' PERMANENT UTILITY EASEMENT**  
 CONTAINING ±212 S.F.  
 OR ±0.01 ACRES

THE NORTH 720 FEET OF  
 THE WEST 1504 FEET OF  
 THE SOUTH 1473 FEET OF  
 THE NW1/4 5-106-52

**NOTES:**

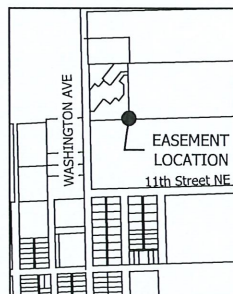
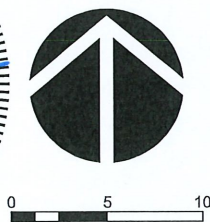
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2. SURVEY WAS DONE WITHOUT BENEFIT OF A TITLE SEARCH.

**LEGEND:**

FOUND 5/8" REBAR

EASEMENT

PREVIOUSLY PLATTED DIMENSION (100.0')



**KEY MAP**

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