

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

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 5th 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 5th 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.

Notary Seal

Notary Public – State of SD

Commission Expires

