

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – E
DATE: December 11-12, 2019

SUBJECT

DSU Resolution – Street Vacation

CONTROLLING STATUTE, RULE, OR POLICY

SDCL § [5-1-7](#)
SDCL Chs. [11-3](#) and [43-21](#)
SDCL §§ [5-2-10](#) & [5-2-11](#)

BACKGROUND/DISCUSSION

The Board approved the DSU Residence Village Facility Program Plan at its [April 2019](#) meeting. As part of that project, DSU would like to request the City of Madison vacate the portion of 8th Street running between Washington Avenue and Lee Avenue. That process will require, in-part, the City of Madison retaining/receiving an easement associated with the waterline currently running under the portion of 8th Street to be vacated, and any necessary platting which may be necessitated by the street vacation.

IMPACT AND RECOMMENDATION

DSU requests the Board of Regents approve proceeding with the requested street vacation to allow for the planned development of the Residence Village Facility and adopt the Resolution set forth in Attachment I requesting the grant of an easement in favor of the City of Madison for the water and storm sewer utilities running under the portion of 8th street to be vacated and to effectuate any necessary platting resulting from the street vacation, if any.

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 20191211_6-E:

I move to approve proceeding with the requested street vacation 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, any necessary platting resulting therefrom, and authorize staff/employees to take any action(s) necessary to effectuate the intentions thereof.

RESOLUTION

Resolution requesting the grant of an easement through, under, in, on and across portions of the vacated section of 8th Street occupied by Dakota State University for the benefit of the City of Madison, and to execute and file any necessary plat(s) resulting therefrom.

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 the water and storm sewer utilities through, under in, on and across the following described real estate in the City of Madison, Lake County, South Dakota, and to otherwise execute and file any plat(s) necessary and appropriate as a result of the associated street vacation:

A strip of land 20 feet wide for construction and maintenance of the existing storm sewer utilities centered upon the existing location and water utilities centered over the to be constructed location of such water utilities within the 20-foot wide easement, and appurtenances over, under and across the property legally described as: The vacated portion of 8th Street Northeast between Washington Avenue and Lee Avenue, Madison, Lake County, SD, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein.

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. This resolution shall also serve to ratify, request and/or approve any and all documents, transactions and/or actions necessary to prepare, complete, and effectuate the execution, filing, and intended outcome(s) of the street vacation and easement contemplated herein.

Dated this ____ day of December, 2019

SOUTH DAKOTA BOARD OF REGENTS

By _____

Kevin V. Schieffer

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at its meeting conducted on the ____ day of December, 2019, 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 December, 2019

SOUTH DAKOTA BOARD OF REGENTS

By _____

James Morgan

Secretary

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

**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 Madison, P.O. Box 17, Murdo, South Dakota, 57559 [“the City”].

WHEREAS, The City is desirous of acquiring a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of water and storm sewer 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 right-of-way easement for the following described purposes: the right to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate water and storm sewer utilities, and all necessary and appurtenant of structures, fixtures and controls, through, under, in, on and across the following legally described real estate within the City of Madison, Lake County, State of South Dakota (the “Easement Area”):

A strip of land 20 feet wide for construction and maintenance of the existing storm sewer utilities centered upon the existing location and water utilities centered over the to be constructed location of such water utilities within the 20-foot wide easement, and appurtenances over, under and across the property legally described as: The vacated portion

of 8th Street Northeast between Washington Avenue and Lee Avenue, Madison, Lake County, SD, as further shown in Exhibit "A", a copy of which is attached hereto and incorporated into this agreement, the same as if written at length herein.

2. The City agrees that any construction will not 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 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 City 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 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. Nothing in this agreement shall be read to waive Grantor's sovereign immunity.

5. 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 granted hereunder. This Easement is also subject to a reservation of 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.

6. In consideration of this 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.

7. The land herein described is to be used for the utilities or structures

associated with the operation and maintenance of electrical services and no other purpose whatsoever, and that should the above described real property granted by this Easement cease to be used for said purposes for two consecutive years, this Easement reverts to the State or its successor and assigns.

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.

9. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto.

10. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota.

11. This Easement shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Easement on this ____ day of _____, 20__.

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Ryan Brunner
Commissioner of School and Public Lands

CITY OF MADISON

BY: _____

ATTEST:

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 20____, 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 who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that she executed the same.

Notary Seal

Notary Public – State of SD

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 20____, before me the undersigned Notary Public within aforesaid County and State, personally appeared Ryan Brunner, Commissioner of South Dakota School and Public Lands, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public – State of SD

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, 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

Notary Public – State of SD

Commission Expires