

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

Consent

**AGENDA ITEM: 5 – Q
DATE: December 9-10, 2020**

SUBJECT

City of Sioux Falls Easement Resolution (SDSD)

CONTROLLING STATUTE, RULE, OR POLICY

SDCL [5-2-10](#) & [5-2-11](#).

BACKGROUND / DISCUSSION

The City of Sioux Falls is seeking a right-of-way easement for public right of way, drainage, and utility easement to install, repair, maintain, alter, and operate a street/highway (including curb and gutter, sidewalks, street lights, stop lights, signs and other facilities or structures associated with the operation and maintenance of the street/highway), as further described in Exhibit I to Attachment I. This easement and right-of-way will be constructed across real property owned by the South Dakota School for the Deaf (SDSD) to add a southbound turning lane at the intersection of W. 38th Street and Shirley Avenue. In addition to the permanent easement, a temporary easement comprising a slightly larger area will also be needed to facilitate the necessary construction/staging. The easement(s) will not interfere with the SDSD’s use of the property, as both the permanent and temporary easement areas are located on a sliver of property that is not adjacent to the building or parking lot, and currently comprises the boulevard along W. 38th Street, to the east of the parking lot.

IMPACT AND RECOMMENDATION

The SDSD requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of the permanent and temporary easements to the City of Sioux Falls for public right of way, drainage, and utility easement to install, repair, maintain, alter, and operate a street/highway (including curb and gutter, sidewalks, street lights, stop lights, signs and other facilities or structures associated with the operation and maintenance of the street/highway, as further described in Exhibit I to Attachment I. The \$4,000 payment provided via Exhibit II to Attachment I will be deposited in the SDSD trust fund in accordance with the provision of SDCL 5-2-11 and Art. VIII of the SD Constitution.

Staff recommends approval.

(Continued)

DRAFT MOTION 20201209_5-Q:

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.

City of Sioux Falls Easement Resolution – SDSD

December 9-10, 2020

Page 2 of 2

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of a Permanent and Temporary Easements
to the City of Sioux Falls

Attachment I, Exhibit I – Draft Permanent Easement to the City of Sioux Falls

Attachment I, Exhibit II – Draft Temporary Easement to the City of Sioux Falls

RESOLUTION**Resolution requesting the grant of a permanent and temporary easements through, under, in, on and across portions of land occupied by South Dakota School for the Deaf for the use and benefit of the City of Sioux Falls.**

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of the South Dakota School for the Deaf, in consideration of one dollar (\$1) and other good and valuable consideration, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the Commissioner of School and Public Lands (“Commissioner”) to draw up all necessary documents and to forward them to the Governor and request their execution in order to grant to the City of Sioux Falls, an easement for public right of way, drainage, and utility easement to install, repair, maintain, alter, and operate a street/highway (including curb and gutter, sidewalks, street lights, stop lights, signs and other facilities or structures associated with the operation and maintenance of the street/highway), as further described in Exhibit I, through, under, in, on and across the following legally described real estate within Minnehaha County:

Lot 1A in Tract 1A of Menard’s Addition to the City of Sioux Falls, Minnehaha County, South Dakota, as reflected in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein.

Grantor further requests the Commissioner draw up all necessary documents and forward them to the Governor and request their execution in order to grant to the City of Sioux Falls, a temporary easement to provide the necessary access to facilitate the construction of the intended public right of way, drainage and utilities associated with the aforementioned easement, as further described in Exhibit II. Grantor requests that any grant of easement be consistent with, or responsive to, the issues identified in the draft easement documents attached hereto as Exhibit I and Exhibit II, without restricting the ability of the parties to further revise and finalize the details of the final document(s).

Grantor requests that any grant of easement provides that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agree to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE FOLLOWS.)**

Dated this ____ day of December, 2020.

SOUTH DAKOTA BOARD OF REGENTS

By _____

John W. Bastian

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board on the ____ day of December, 2020, 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, 2020.

SOUTH DAKOTA BOARD OF REGENTS

By _____

Pam Roberts

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 PUBLIC RIGHT OF WAY, DRAINAGE
AND 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 between the City of Sioux Falls, 224 West 9th Street, Sioux Falls, SD 57104 [the "City"].

WHEREAS the City is desirous of acquiring a permanent easement for the purpose of public right of way, drainage and utilities, and associated structures and facilities above and below the surface of the proposed easement area upon 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 an exclusive permanent public right of way, drainage, and utility easement for the following described purposes: the right to install, repair, maintain, alter, and operate a street/highway (including curb and gutter, sidewalks, street lights, stop lights, signs and other facilities or structures associated with the operation and maintenance of the street/highway as deemed necessary by the City Engineer), drainage, (including natural drainage and municipal stormwater facilities), and utilities (including water, sanitary sewer and other utilities) through, under and across the following legally described real estate within the County of Minnehaha, State of South Dakota (the "Easement Area"):

**Lot 1A in Tract 1A of Menard's Addition to the City of Sioux Falls,
Minnehaha County, South Dakota.**

2. The Parties acknowledge that the City may issue permits to third party utilities operating within the Easement Area as prescribed by city ordinance(s). Any such permit(s) shall be subservient to this easement.

3. The City agrees that any City construction will not interfere unnecessarily with the State's use of its adjoining property and will not endanger or injure any improvements thereon and, that City will not issue permits granting others the right to interfere with the State's use of its adjoining property or 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.

4. The City further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the street/highway(s), drainage, water, sanitary sewers, and other utilities or structures installed by the City and for the operation and maintenance of street/highway improvements completed by the State's tenants in accordance with City Engineering Design Standards.

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 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 city and damages associated with the City's operation and maintenance of the street/highway improvements when completed by the State's tenants in accordance with City Engineering Standards 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 the City. The City may require contractors and permittees, to defend, indemnify and hold the city whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or 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 City'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 granted hereunder. The State agrees to notify and receive approval from the City of any additional easements and rights-of-way granted in the exclusive Easement Area. 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.

7. In consideration of this Easement, the City will not impose special assessments on the State to pay for connection costs to City utilities that may be associated with the development of the above described easement area. Nothing in this Permanent Easement forecloses the City and State from entering into a negotiated Agreement to address the costs incurred by the City in installing street, sidewalk, and city utility improvements. Notwithstanding Paragraph 4 above, the State or its tenants will be responsible for upkeep, such as snow removal, on the sidewalk and in areas designated for use as tenant parking. Nothing in this Agreement forecloses the City from charging State's tenants for applicable fees associated with development, including fees for sanitary sewer, stormwater/drainage, water, or streets, as well as applicable maintenance or usage fees to the extent such payments are required by the Sioux Falls City Council. The State agrees not to claim exemptions to such fees on behalf of its tenants (other than tenants who are agencies or offices of the State itself).

8. The land herein described is to be used for public right-of-way, drainage, and utilities as provided above and no other purpose whatsoever, and that should the above described real property interest granted by this Easement cease to be used for public right of way, drainage, or utility purposes for two consecutive years, this Easement reverts to the State or its successor and assigns.

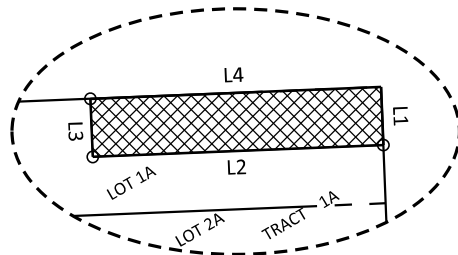
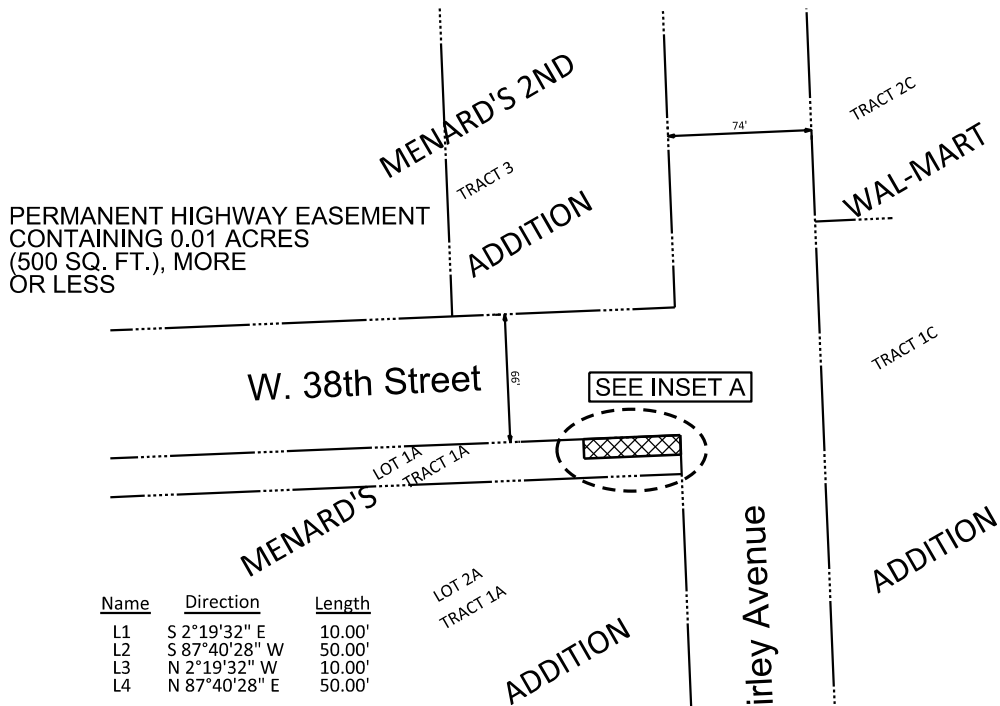
9. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State and the City. This agreement can be modified only in writing and signed by the State and the City or their respective 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.

Parcel 60

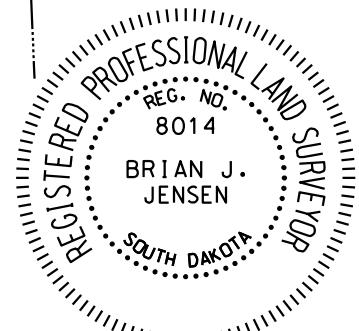
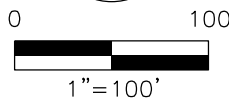
EXHIBIT A

PERMANENT HIGHWAY EASEMENT IN LOT 1A IN TRACT 1A OF
MENARD'S ADDITION TO THE CITY OF SIOUX FALLS,
MINNEHAHA COUNTY, SOUTH DAKOTA



LEGEND

- () - RECORD DATA GROUND DIST.
- - FOUND 5/8" REBAR (UNLESS AS NOTED)
- CIP - CAPPED IRON PIN
- IP - IRON PIN
- ▨ - PERMANENT EASEMENT



05NF P 1400(16)



41st STREET
PERMANENT HIGHWAY EASEMENT EXHIBIT

PROJECT # 10121809	DATE 12/18/2019
DRAWN BY BJJ	FIGURE EXHIBIT A
CHECKED BY DJS	

SFRW-69 (08-19)

TEMPORARY EASEMENT AGREEMENT

Project No. **P 8050(81)** PCN No. **06XY** Parcel No. **60**
County **Minnehaha**

This Agreement for temporary easement rights is entered into by the undersigned, referred to in this Agreement as the GRANTOR, and the CITY OF SIOUX FALLS, acting by and through its Mayor, referred to in this Agreement as the CITY.

BACKGROUND:

- 1. The CITY contemplates the construction, operation, and maintenance of highway facilities on the above described project as provided for by law; and,
- 2. A portion of the temporary easement necessary for the proper completion of these highway facilities, as designated by plans on file with the CITY, is located over and across the real property owned by the GRANTOR, and described as follows:

Lot 1A in Tract 1A of Menard’s Addition to the City of Sioux Falls, Minnehaha County, South Dakota.

SFRW-69 (08-19)

THE CITY AND THE GRANTOR AGREE AS FOLLOWS:

1. The GRANTOR grants to the CITY and the CITY'S agents and assigns a temporary easement to enter upon and to use the designated area for construction activities related to the project including but not limited to detour, cutslope, fillslope, temporary utility facilities, and drainage channel purposes, upon approval of this Agreement, with the understanding this permission for entry will terminate one (1) year after the construction of the project has been completed. The temporary easement area is estimated to be:

500 acres/sq. ft. at \$ 1.54 per acre/sq. ft.
 _____ acres/sq. ft. at \$ _____ per acre/sq. ft.
 _____ acres/sq. ft. at \$ _____ per acre/sq. ft.
 _____ acres/sq. ft. at \$ _____ per acre/sq. ft.

2. The GRANTOR understands and agrees the CITY may use any additional easement area necessary for the proper completion of the project and will compensate the GRANTOR at the rate stated in paragraph 1 above. The CITY will measure the additional easement area and will pay for the additional easement area separately. The CITY will slope and grade the easement area used as smooth as practicable and will leave the easement area in a neat and workmanlike manner.

3. The easement area does does not contain existing fence. If the easement area does contain existing fence, the following conditions apply:

A. The GRANTOR may clear existing fence before it is cleared by the CITY. Any fence existing within the temporary easement area will become the property of and will be disposed of by the CITY or the CITY'S agents or assigns if not salvaged by the GRANTOR prior to being cleared by the CITY. The CITY will not be responsible for retention of livestock if the GRANTOR salvages the fence. The CITY'S contractor will provide a temporary fence, where necessary, to retain livestock if the CITY clears the existing fence. Such temporary fence remains the property of and may be removed by the CITY'S contractor.

B. The CITY will will not replace existing fence removed by the CITY. Any replacement fence will consist of the following type of fence that conforms as nearly as possible to the existing fence:

- Permanent type ___ fence upon completion of construction;
 Temporary type ___ fence during construction;
 Other permanent specialty fencing to be installed by GRANTOR consisting of: _____ . The CITY will pay the GRANTOR a lump sum of _____ representing full compensation for the GRANTOR'S cost of acquiring and installing the fence.

C. Permanent fence, except permanent fence constructed within interstate highway right of way, will become the property of and will be maintained by the GRANTOR. Permanent fence constructed within interstate highway right of way will remain the property of and must be maintained by the CITY.

4. The easement area does does not require Type 1A Temporary fence for environmental purposes. The GRANTOR will maintain the Type 1A temporary fence in place for at least three (3) years after completion of project construction and will be responsible for any subsequent removal or replacement of the fence.

SFRW-69 (08-19)

5. The easement area does does not contain existing crop at the date of execution of this Agreement. If the easement area does contain crop at the date of execution of this Agreement, the following conditions apply:
- The CITY will pay for crop damage caused by the CITY within the temporary easement area only when such crop has been planted prior to the date the GRANTOR signs this Agreement.
 - The CITY will not pay for damage to perennial grass being used for pasture.
 - The amount of crop damage to be paid by the CITY will be based on the area damaged, percent of damage, average yield on adjoining fields, and market price at the time of harvest less a predetermined harvesting cost. Type and location of crops planted prior to the signing date of this Agreement are:
6. The easement area does does not contain buildings or improvements which are considered to be a part of the real property, such as fixtures, removable building equipment, and trade fixtures. If the easement area does contain such items, the following conditions apply:
- The GRANTOR is allowed to retain, for their salvage value, the buildings or improvements listed in 6.B. below. The GRANTOR must remove these items from the above described real property by _____, 20____, unless the CITY grants, in writing, a removal date extension.
 - The GRANTOR agrees items being retained and the salvage value of these items are:
 - The CITY will withhold \$ N/A from any payments due under this Agreement until the GRANTOR has removed the salvaged items.
7. The Agreement does does not contain mutually agreed upon special conditions. If the Agreement contains special conditions, the special conditions are as follows:

The GRANTOR has been advised of the right to an appraisal of GRANTOR'S property and hereby waives any right to such appraisal. The parties agree the total payment for all property interests acquired by the CITY, including land conveyed, temporary easements, damages, improvements, and interest, is

FOUR THOUSAND AND 00/100 dollars (\$ 4,000.00).

- The summarization of total compensation of \$4,000.00 includes, the permanent easement for \$3,230.00 per STATE OF SOUTH DAKOTA PERMANENT PUBLIC RIGHT OF WAY, DRAINAGE AND UTILITY EASEMENT and the Temporary easement for \$770.00 per this agreement.**
 - The duration of the Temporary Construction Easement shall become effective on the date construction activities commence on the described premise(s) of page 1, paragraph 2 of this agreement, and shall conclude two (2) years after said effective date; and no later than one (1) year after project completion. In the event of any unforeseen issue or subsequently identified work which may be required to achieve completion of this project or any ancillary item or issue related thereto; whereas Grantee will be additionally compensated as described on page 2, paragraph 2 of this agreement and in accordance with the SDDOT ROW Manual.**
8. Neither the GRANTOR nor any of the GRANTOR'S successors in interest will interfere with or disturb any temporary facility constructed within the temporary easement area prior to project completion without the CITY'S written approval.
9. All foregoing conditions are binding upon the CITY only upon approval of this Agreement by the CITY'S authorized representative. If approval is not obtained, this Agreement is null and void and of no force or effect.

SFRW-69 (08-19)

- 10. The CITY will pay the GRANTOR total consideration in the amount of \$ ***SEE SECTION 7** as full and final compensation for the temporary easement area, improvements, damages, costs, interest, fees, and any other claims or causes of action resulting from the acquisition and use of the temporary easement area. The CITY will make this payment upon receipt of all properly executed documents and releases and completion of the CITY OF SIOUX FALLS voucher clearance requirements,
- 11. Each party represents that it has voluntarily signed this Agreement as its own free act and is not acting under any coercion or duress.
- 12. Each party represents that no representations, promises, agreements, stipulations, or statements have been made by any representatives of the other party to induce a settlement beyond those contained in this Agreement.
- 13. The CITY may unilaterally terminate this Agreement upon fulfillment of the CITY'S obligations.
- 14. This Agreement is entered into on this ____ day of _____, 20_____.

The GRANTOR acknowledges the receipt of an identical copy of this Agreement.

GRANTOR(S):

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Ryan Brunner
Commissioner of School and Public Lands

ACKNOWLEDGMENT FOLLOWS

SFRW-69 (08-19)

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2020, before me the undersigned Notary Public within aforesaid County and State, personally appeared _____, 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 he executed the same.

Notary Seal

Notary Public

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2020, before me the undersigned Notary Public within aforesaid County and State, personally appeared _____ 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

Commission Expires

The above and foregoing Easement is approved on _____, 20_____.

Paul TenHaken
Mayor

Attest: City Clerk