BOARD OF COMMISSIONERS AGENDA
June 6, 2022
5:30PM – COMMISSION ROOM – 116 W CENTER ST

Please join the Zoom meeting from your computer, tablet or smartphone.
https://us06web.zoom.us/j/89534434772

You can also dial in using your phone.
+1 312 626 6799

Meeting ID: 895 3443 4772

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ADOPT AGENDA

APPEARANCES/ACKNOWLEDGEMENTS
Acknowledge Application for Temporary Retail (On-Off Sale) Malt Beverage License and Set Date of Hearing June 21st, 2022
Greater Madison Area Chamber of Commerce/Lake Area Improvement Corporation - DownTown in MadTown

CONSENT CALENDAR
1) Minutes – May 16, 2022
2) Minutes – May 23, 2022
3) April 2022 Building Permits
4) Bill for Approval – June 8, 2022
5) Bills for Ratification – June 1, 2022
6) Payroll Bills for Ratification – May 27, 2022
7) Personnel
8) 2022 – 2023 Retail (on-off sale) Malt Beverage & SD Farm Wine License Renewals: Dakota Butcher, Cesar Corez, & Sodexo America
9) Appoint Bhaskar Rimal to Madison Public Library Board of Trustees
10) Appoint Matt Burpee to Madison Park Board
11) Set Bid Date - Bid No. 913 - Water Main Improvement Project 2022-1 – June 30, 2022 1:00pm

OLD BUSINESS
1) Approve Corrected Agreement with Flock Services Group for PD Camera System
2) Update Madison Aquatic Center
3) Update on Storm Recovery

NEW BUSINESS
1) Hearing Upon Application for Sale of Alcoholic Beverages Bethel Fundraiser/Sporty's Bar & Grill – CANCELLED
2) Adopt Resolution No. 2022-26 Designate ARPA Grant Signatories & Certifying Officials
3) Authorize Mayor to Sign 2022G-ARP-163 Grant Agreement
4) Adopt Resolution No 2022-27 Issuance & Sale of Waste Water Bond
5) Authorize Mayor to Sign 2022G-ARP-164 Grant Agreement
6) Adopt Resolution No 2022-28 Issuance & Sale of Drinking Water Bond
7) Adopt Resolution No 2022-29 Waste Water & Water Fees, Rates & Charges
8) Authorize Mayor to Sign Letter of Understanding with 1st District Association of Local Governments
9) Adopt Resolution No. 2022- 30 Provide for the Creation of Tax Increment District Number Three
10) Approve and Authorize Mayor to Sign Project Plan Tax Increment District Number Three
11) Approve and Authorize Mayor to Sign Developer's Agreement Tax Increment District Number Three
12) Authorize Mayor to Sign City Hall/Police Station
13) DSU presentation on athletic facility and request for contribution
14) Approve Community Center Roof Repairs at additional estimated cost of $60,000 to the City to come from CC - MRR
15) Discuss Resolution No 2022-31 Special Maintenance Fee

16) Discuss and Take Action on Request for Qualifications – City Engineering Services
17) Authorize Mayor to Sign Change Order No. 1 – J & J Earthworks, Inc. – Madison Water System Improvements Phase 1B
18) Consider Sidewalk Variance Appeal – 2021 Sidewalk Improvement Project
    S ½ Lots 4, 5, 6 Block 9 Waddell's Addition (114 N Olive Avenue)
19) Consider Sidewalk Variance Appeal – 2021 Sidewalk Improvement Project
    N ½ Lots 4, 5, 6 Block 9 Waddell's Addition (122 N Olive Avenue)
20) Consider Sidewalk Variance Appeal – 2022 Sidewalk Improvement Project
    W ½ Lot 6 & all of Lot 7 Block 16 Town Proprietor's 2nd Addition (611 SE 1st Street)
21) Ad for Bid No 913 – Water Main Improvements Project (9^{th}/Union)
22) Discuss & Award Gen Plant RFP

PUBLIC COMMENT

ANNOUNCEMENTS

1) Next Commission Meeting – Regular Meeting Tuesday, June 21, 2022 at 5:30 p.m.

EXECUTIVE SESSION

1) SDCL 1-25-2 (1)

ADJOURN

Anyone wishing to speak to an item on the agenda must be acknowledged by the chair and come to the podium to address the Mayor and City Commission. Addressing other audience members will not be permitted.

Supplementary agenda information may be accessed at www.cityofmadisonsd.com
AGENDAS – CITY COMMISSION

If special accommodations are necessary to attend any Board of Commissioners meeting, please contact the Finance Office at (605) 256-7500 at least 24 hours before meeting time. All attempts shall be made to accommodate a request.

CITY OF MADISON
BOARD OF COMMISSIONERS PROCEEDINGS
MADISON, SD 57042

May 16, 2022
Regular

The Board of Commissioners of the City of Madison met in regular session at 5:30pm on the 16th day of May with the following members present on roll call: Mayor Roy Lindsay and Commissioners Jeremiah Corbin, Kelly Dybdahl, and Adam Shaw. Absent: Jerae Wire.

The Pledge of Allegiance was recited.

Motion by Commissioner Corbin, seconded by Commissioner Sahw to adopt the May 16th agenda with two changes: remove oath of office and add Local Government Certification for ICAP. Motion carried.

Motion by Commissioner Corbin, seconded by Commissioner Dybdahl, to approve the following items on the consent calendar: Minutes – May 2, 2022, Minutes – May 10, 2022, Authorize Mayor to sign Lake County 2022-2023 Fuel System Agreement, Authorize Mayor to Sign Local Government Certification Domestic Violence Network - Emergency Solutions Grants Program, Notice of Hearing Temporary Malt Beverage License - Bethel Fundraiser June 6th, 2022 at 5:30 pm, 2022 - 2023 Retail (On-off sale) Malt Beverage & SD Farm Wine License Renewals. Authorize Mayor to Sign Local Government Certification ICAP - Emergency Solutions Grants Program. Motion carried unanimously.

Payroll Bills for Ratification - May 13, 2022:
AFLAC, 3164.31; Delta Dental, 5833.84; Health Pool of South Dakota, 38,896.39; IRS-EFTPS, 35,561.97; Local Union #426, IBEW, 344.00; Office-Child Support Enforce, 900.00; SD Retirement System, 19,761.66; SD Retirement System, 2687.500; Teamsters Local No. 120, 644.00.

Bills for Ratification - May 11, 2022:
Abraham/Heath, Swat Basic Training - Rapid City, 200.00; Anderson Nurseries Inc, Trees, 1660.00; Appeara, Mat Rentals - City Hall, 130.58; At & T Mobility, Dataconnect Government, 159.76; Baker & Taylor, Books, 105.95; Blackstone Publishing, Cds, 100.63; Boyer Ford Trucks Inc, Unit #75 Blinker Repair, 1075.47; Builders Firstsource, Concrete Mix, 11.98; Civic Plus LLC, Municode Legal Manuscript, 4090.00; Classic Convenience Inc, Fuel, 245.00; Coles Petroleum Products Inc, 4/1/2022 To 4/27/2022 Fuel, 8114.71; Core & Main Gp LLC, Coupler - 6", 930.12; Ditch Witch Of South Dakota, Hole Vac Hose & Nozzle, 810.24; Elite Card Payment Center, Credit Card Purchases Thru 4/17/22, 6876.49; Etterman Enterprises Inc, Shop Supplies, 41.10; F & M Coop Oil Co, Fuel, 1326.12; Fastenal Co, Ear Plugs, Wipes, Rings, 98.97; First Bank & Trust, Bond Interest Acct# 20200501, 11520.72; Flanagan/Steve, Swat Basic Training - Rapid City, 271.36; Fox Promo LLC, Plaque, 32.00; Galls LLC, Uniform Pants, 35.66; Golden Valley Hardscapes LLC, Playground Mulch, 3575.00; Goth Electric, Frozen Sewer Pipe, 204.08; Gravel Pit Co, Crushed Gravel, 161.10; Graybar Electric Co Inc, E-W9000 - Cat6 Wire, 473.98; Great America Financial Svcs, Copier Agrmt #025-1686092-000, 209.09; Heiman Inc, Helmets, 3130.60; Hillyard Inc, Cleaning Supplies - Cust# 206084, 256.85; Houston Engineering, Nw 9th St & Union Ave, 2718.50; Hunter Publishing Inc, April 21 Publications, 1132.37; Isg, Capital Improvement Plan, 6009.46; Kolorworks, Primer, 64.76; Krug Products Inc, Fittings, 62.00; Lake County Treasurer, 4-1-22 To 4-27-22 Fuel Expense, 613.71; Lake Veterinary Clinic, Flea/Tick Medicine, 193.29; Locator & Supplies Inc, Inverted Stripe Wand, 43.03; Madison Ace Hardware, Parts, 84.68; Madison Cleaning Company LLC, Cleaning Services - City Hall, 636.25; Madison Grocery Store Inc, Animal Cookies/Crackers/Bananas, 144.77; Markos Repair, Chainsaw Chains, 71.49; Micromarketing LLC, Blu-Rays/Dvds, 226.24; Midwest Alarm Co, Security Monitoring, 94.35; Minnesota Municipal Util Assn, Leadership Session 2 (Jl), 975.00; Northwestern Energy, Library 2541218-0, 580.06; O Reilly Automotive Inc, Oil Filter, Fuel/Wtr Sep, 130.08; Oclc Inc, Cataloging And Metadata Subscription, 368.00; Office Peeps Inc, Office Supplies, 298.12; One Source, Reissue Payment From 3/10/22, 365.00; One Stop, Rural Fire Dept Fuel, 163.05; Porta Pros Inc, Toilet Rental - Garden Plots, 142.00; Pro Garage Door, Armory Garage Door, 360.20; Resykle LLC, Flat Iron, 18.60; Runnings Supply Inc, Wet/Dry Vac - Shelter Supplies, 455.27; Schneider Geospatial LLC, Application Hosting (5/1/22 - 12/31/22), 1328.00; Sd Dept Of Agriculture, Operator Cert Exam - Dahl, 60.00; Sd One Call, One Call Services, 140.77; Sdn Communications, Internet Service - Acct# 031789, 516.79; Shpigler Consulting Inc, Consulting Services, 5300.00; Sioux Falls Outdoor Equipment LLC, Echo Chainsaw, 403.97; Sioux Valley Energy, Utilities - 122030000, 106.00; Streichers Inc, Uniform Pants, 67.98; Sturdevants Madison Inc, Filters 24155, 33849, 310.31; The Tessman Co, Ball Diamond Supplies, 2510.00; Timmer Supply Co, Pvc Dwv Pipe, 178.03; Usa Blue Book, Chemicals, 519.93; Vast Broadband, Phone & Internet - Acct#

000485901, 3076.12; Visual Gov Solutions LLC, Utility Payment Processing, 6319.86; Wesco Distribution Inc, Bid #909 - S & C Basements, 11718.00; Wheelco Brake & Supply Inc, Filter 10141, 32.15;

Bills For Approval - May 18, 2022
Alpha Media USA LLC, Easter Egg Hunt Advertising, 420.00;American Red Cross, Basic Life Support Courses, 248.00;Appeara, Services - Plants, 114.84;Avera Medical Group, Drug Collection & Testing, 61.00;Big Sioux Community Water Sys, April Usage, 7721.61;Borns Group Inc, Printing & Postage, 1169.82;Butler Machinery Co, Repair On Engine #2 @ Generation Plant, 1420.00;Centurylink Qc, May Phone Bill, 90.84;City Of Brookings Landfill, April Gate Fees, 4002.30;Coles Petroleum Products Inc, Oil 15w40, 695.00;Core & Main Gp LLC, Saddle - Corp Stop - Insert, 266.68;Dakota Custom Turf LLC, Befco Grt-258 Grass Overseeder, 14465.00;Dakota State University, March 2022 Utilities, 10298.47;Dave Putzke Well Drilling, Inc, Well Drilling, Ss Screw, Test Pumping, Generator, 38200.00;East River Electric Power Coop, April Transmission 2022, 17604.72;F & M Coop Oil Co, Fuel, 343.70;Fastenal Co, Hardware & Paint Pens, 79.69;First Bank & Trust, Heartland - April 2022, 360360.44;First Premier Bank, Interest Payment Acct# 2802040002, 3265.39;Flow Control Automation Inc, Syrinix Pressure Monitoring - Network Calming, 17318.45;Graybar Electric Co Inc, Outdoor Lighting - Original Inv# 9325439535, 10587.00;Greater Madison Area Chamber, 2022 Golf Classic Team & Games, 420.00;Heiman Inc, Fire Extinguisher Inspections, 1992.00;Josh's Tools LLC, Pliers, 56.51;Leader Printing, City Wide Clean Up Flyers, 350.00;Madison Ace Hardware, Trufuel/Roof Cement, 85.15;Madison Grocery Store Inc, Asp Snacks, 109.78;Madison Tires Inc, Unit #27 Tire Replacement, 150.00;Northwestern Energy, Armory 2541047-3, 1069.46;Office Peeps Inc, Office Supplies, 14.88;Porta Pros Inc, Portable Toilet - Memorial Park, 312.00;Runnings Supply Inc, Gloves, 50.91;Schoenfish & Co Inc, Assist With 2021 Annual Report Preparation, 3250.00;Sd Dept Of Revenue, Malt Beverage Renewals 2022-2023, 2100.00;Siteone Landscape Supply LLC, Sprinkler System Supplies, 9999.75;Sturdevants Madison Inc, Filters/Oil/Shop Towels, 220.96;Timmer Supply Co, Sprinker Repair On Division By Mini Sub, 8.94;Us Bank, Interest Payment Acct# 64-3310029233, 9753.61;Us Dept Of Energy, April 2022 Services, 108230.00;Valiant Living Inc, Contracted Expenses, 5096.00;

Personnel:
Mathison, Scott $15.75/hour, Mathison, Bob $15.50/hour, Mohr, Christopher $14.00/hour, Christensen, Christian $14.00/hour, Kahler, Gregg $13.00/hour, Bergerson, Carsten $11.05/hour, Lindsay, Roy $19,818.72-salaryHunsley, Carson $9.95/hour, Weck, Courtney $20.97/hour, Weck, Courtney $20.97/hour, Sutten, Skyler $41.74/hour, Christiansen, Steven $26.87/hour, Howell, Samuel $9.95/hour, Brooks, Jacob $9.95/hour,

Motion by Commissioner Corbin, seconded by Commissioner Dybdahl to Adopt Resolution No. 2022 - 24 Temporarily Waive Building Permit Fees Related to Storm Damages. Motion carried.

Motion by Commissioner Shaw, seconded by Commissioner Corbin to Adopt Resolution No. 2022-25 – Amend Employee Compensation 2022 – Office Manager. Motion carried.

Motion by Commissioner Corbin, seconded by Commissioner Dybdahl to approve 1st reading of Ordinance No. 1649 - Amend Appendix B -Zoning with the following change from “R90 to R20”. Lane Rozeco was present to discuss proposed assisted living project. Motion carried.

Motion by Commissioner Dybdahl, seconded by Commissioner Shaw to Authorize Mayor to Sign agreements with Flock Services Group for PD camera system. Commission Wire joined at 5:40p.m. Motion carried unanimously.

Update was provided on staffing and opening of Madison Aquatic Center. City Administrator Berreth spoke on the plan for reduced hours due to staffing constraints. Mike McGilvery spoke on the preparation for opening of the pool, despite storm debris.

Update was given on May 12th Storm Recovery efforts. Discussion on disposal of debris, debris collection, and ask the public for patience. Request also made to stay off ball fields and parks until they are cleaned up.

discuss planned assisted living facility. Motion carried.

Motion by Commissioner Shaw, seconded by Commissioner Corbin to refer appeals to Sidewalk Committee. No one present to speak. Motion carried

During public comment, Chuck Clement made staff aware of storm damage limiting traffic. John Mills introduce himself as candidate for District 8 State Representative.

The next Board of Commissioners meeting is May 23rd, 2022 at 5:30pm.

An announcement was made that the three percent credit card processing fee went into effect on May 6th, 2022.

Motion by Commissioner Shaw, seconded by Commissioner Dybdahl, to enter into executive session pursuant to SDCL 1-25-2(1) at 6:05pm. Motion carried unanimously

The board came out of executive session at 7:25pm.

The Board of Commissioners adjourned at 7:26pm.

/s/Sonya Wilt
Finance Officer

Published once at the approximate cost of $__.

CITY OF MADISON
BOARD OF COMMISSIONERS PROCEEDINGS
MADISON, SD 57042

May 23, 2022
Special

The Board of Commissioners of the City of Madison met in special session at 4:30pm on the 23rd day of May with the following members present on roll call: Mayor Roy Lindsay and Commissioners Kelly Dybdahl, Adam Shaw, Jeremiah Corbin, and Jerae Wire.

The Pledge of Allegiance was recited.

Motion by Commissioner Corbin, seconded by Commissioner Dybdahl to adopt the May 23rd agenda. Motion carried unanimously.

Motion by Commissioner Shaw, seconded by Commissioner Wire, to approve consent items. Motion carried unanimously.

Motion by Commissioner Corbin, seconded by Commissioner Shaw, to approve 2nd reading of Ordinance 1649 – Amend Appendix B-Zoning. Motion carried unanimously.

Chuck Clement spoke in public comment regarding the agenda for the May 23rd meeting was not posted at City Hall. It was posted on the website and provided to the newspaper.

Announcements included: notice that the next Board of Commissioners meeting is June 6, 2022 at 5:30pm. And there are 3 Board Vacancies: Library Board, Park Board, and Planning Commission.

Motion by Commissioner Wire, seconded by Commissioner Shaw, to go into executive session at 4:48p.m.. Motion carried unanimously.

Motion by Commissioner Dybdahl, seconded by Commissioner Wire, to leave executive session at 5:14p.m.. Motion carried unanimously.

The Board of Commissioners adjourned at 5:15pm.

/s/Sonya Wilt
Finance Officer

Published once at the approximate cost of $__.

April 2022 Building Permit Report

Date	Permit No.	Owner	Address	Use	Type of Construction	Contractor	Estimated Build Cost	Permit Fee
4/1	8132	Chris & Rhonda Heidelberger	1019 N. Harth Avenue	Res	Remove existing window, install window well and install egress window	Self	$1,000.00	$25.00
4/1	8129	Ed Hansen	714 NW 2nd Street	Res	Add 8' x 11' master bathroom addition	CJ Lembcke Construction 714 NW 2nd Street Madison, SD 57042	$20,000.00	$196.00
4/5	8136	Mark McMullen	1440 NE 4th St	Res	Replace patio & window	Busy Bee Handyman 30019 471st Ave Madison, SD 57042	$1,800.00	$34.00
4/6	8138	J L Properties LLC	712 N Lincoln Ave	Rees	Remove garage	Self	$500.00	$10.00
4/7	8150	Great Western Bank	301 N Egan Ave	Com	Replace sign faces	Jones Signs 1711 Scheuring Road De Pere, WI 54115	$15,641.00	$35.00
4/12	8140	Carolyn Genzlinger	918 N Roosevelt Ave	Res	Reside Home	Baseline Construction 519 NE 6th St Madison, SD 57042	$9,000.00	$20.00
4/12	8141	Trent & Julia Miller	827 Heaherwood Ave	Res	New Residence	Baseline Construction 519 NE 6th St Madison, SD 57042	$400,000.00	$1,678.50
4/12	8142	Roeman Properties LLC	948 NE 5th St	Res	Replace windows & doors	Baseline Construction 519 NE 6th St Madison, SD 57042	$16,000.00	$160.00
4/12	8144	DeVonte & Emily Garcia	627 SE 4th St	Res	Replace windows, siding and kitchen	Callies Homes 23535 434th Ave Howard SD 57349	$75,000.00	$516.00
4/12	8145	Kimberly Raske	613 N Antelope Ave	Res	Replace Deck	Self	$6,000.00	$70.00
4/12	8147	Norma Goth	119 N Blanche Ave	Res	Rehab existing residence. Sheetrock, reinstall cabinets, wiring, replace furnace and a/c, vinyl siding on garage, flooring, trim, and interior doors	Self	$50,000.00	$403.50
4/13	8148	David Bauman	512 NE 6th Street	Res	Move in 10' x 16' storage building	Self	$3,600.00	$52.00
4/18	8149	James Heidelberger	914 NW 2nd St	Res	Demolish Garage	Self	$0.00	$10.00
4/19	8135	Rich Yunker	632 NE 1st St	Res	Fence Yard	Michael's Fence 3900 N Potsdam Ave Sioux Falls, SD 57104	$4,708.00	$61.00
4/20	8151	Embrace Church	305 E Center St	Com	Remodel lower level	Dale Ziebarth 45265 232 St. Madison, SD 57042	$40,000.00	$338.50
4/20	8152	Larry Leeds	515 SE 4th St	Res	Bathroom remodel	Your Home Improvement Co 23823 67th Ave St. St. Cloud, MN 56301	$5,500.00	$70.00
4/23	8154	John Tokheim	325 S Egan Ave	Com	New Fence	Self	$10,000.00	$106.00
4/23	8155	Derek Dudley	925 N Division Ave	Res	Replace decks	RJ C&C LLC 23316 451st Ave Madison, SD 57042	$9,000.00	$97.00

April 2022 Building Permit Report

Date	Permit No.	Owner	Address	Use	Type of Construction	Contractor	Estimated Build Cost	Permit Fee
4/26	8158	Valiant Living	1105 N. Harth Avenue	Res	Remodel existing shower and bathtub (shower conversion)	Bathfitter 542 Industrial Drive Lewisbury PA, 17339	$13,681.00	$142.00
4/26	8159	Valiant Living	1016 N. Lincoln Avenue	Res	Replace existing bathtub with walk in shower	Bathfitter 542 Industrial Drive Lewisbury PA, 17339	$7,119.00	$88.00
4/27	8139	Harvey Pederson	314 NE 1st St	Res	18' x 26' Garage	Heilman Construction 1424 SW 1st St Madison, SD 57042	$45,000.00	$371.00
	21					Total	$733,549.00	$4,483.50

CITY OF MADISON
PERSONNEL
JUNE 2022

NAME	EFFECTIVE DATE	PRESENT STATUS	RECOMMENDED STATUS	PRESENT RATE/SALARY	RECOMMENDED RATE/SALARY	POSITION
Keller, Trish	5/20/2022	NA	Temporary	NA	$18.00	Pool Manager
Ryan, Tessa	5/16/2022	PT<20	Temporary	$13.00	$13.75	Lead Lifeguard
Krusemark, Kaden	5/16/2022	PT<20	Temporary	$13.00	$13.75	Lead Lifeguard
Sahr, Allison	5/16/2022	NA	Temporary	NA	$13.75	Lead Lifeguard
Donelan, Fiona	5/16/2022	NA	Temporary	NA	$12.00	Lifeguard
Tornow, Barbra	5/8/2022	NA	PT<20	NA	$11.05	Water Safety Instructor
duRant, Eden	5/16/2022	NA	Temporary	NA	$9.95	Cashier
Gonyo, Bailey	5/16/2022	NA	Temporary	NA	$9.95	Cashier
Schouwenburg, Katelyn	5/16/2022	NA	Temporary	NA	$9.95	Cashier
King, Lindsey	5/16/2022	NA	Temporary	NA	$9.95	Cashier
Ten Eyck, Hanna	5/16/2022	NA	PT<20	NA	$13.00	Lifeguard
Ten Eyck, Hanna	5/16/2022	NA	PT<20	NA	$13.50	Water Safety Instructor
Engeretson, Margaret	5/18/2022	NA	PT<20	NA	$12.00	Lifeguard
Jensen, Michelle	5/19/2022	NA	PT<20	NA	$11.05	Group Fitness Instructor
Dohrer, MicKale	5/19/2022	NA	PT<20	NA	$9.95	Recreation Assistant
Hunsley, Cambree	5/20/2022	NA	PT<20	NA	$9.95	Recreation Assistant
Reverts, Spencer	5/22/2022	PT<20	Temporary	$13.00	$13.00	PT Library Assistant
Meyer, Issac	5/22/2022	PT<20	Temporary	$13.00	$13.00	PT Library Assistant
Tolley, Julie	5/22/2022	FT	FT	$22.82	$25.19	UB Specialist/Finance Assistant II
Beaner, Heather	5/22/2022	FT	FT	$20.88	$24.21	AP Specialist/Finance Assisant III
Mathison, Karen	5/22/2022	FT	FT	$23.16	$25.57	AR Specialist/Finance Assisant II
Schoeberl, Benjamin	5/23/2022	PT<20	Temporary	$9.95	$11.00	ASP Assisant - Summer Program
Schneider, Chloe	5/23/2022	PT<20	Temporary	$9.95	$10.70	ASP Assisant - Summer Program
Barger, Autumn	5/23/2022	PT<20	Temporary	$9.95	$10.25	ASP Assisant - Summer Program
Miller, Reagen	5/23/2022	PT<20	Temporary	$9.95	$10.70	ASP Assisant - Summer Program
Pattison, Skyler	5/23/2022	PT<20	Temporary	$9.95	$10.70	ASP Assisant - Summer Program
Kremer, Luke	5/23/2022	PT<20	Temporary	$9.95	$12.00	ASP Assisant - Summer Program
Brooks, Jacob	5/23/2022	PT<20	Temporary	9.95	$10.70	ASP Assisant - Summer Program
Frank, Jenna	5/23/2022	PT<20	Temporary	$9.95	$10.70	ASP Assisant - Summer Program
Keller, Tessia	5/23/2022	PT<20	Temporary	$9.95	$11.00	ASP Assisant - Summer Program
Ludemann, Jacob	5/23/2022	NA	Temporary	NA	$18.00	Pool Manager

Lentsch, Melody	5/23/2022	NA	Temporary	NA	$13.00	Park Maintenance I
Prouse, Morgan	5/23/2022	NA	Temporary	NA	$13.00	Park Maintenance I
Swanson, Maxine	5/23/2022	NA	Temporary	NA	$15.50	Park Maintenance I
Newbrough, Cody	5/25/2022	NA	Temporary	NA	$9.95	Service Desk
Anderson, Rylee	5/27/2022	NA	Temporary	NA	$9.95	Cashier
Sewell, Katlyn	5/27/2022	NA	Temporary	NA	$12.00	Lifeguard
Shipley, Savannah	5/28/2022	NA	Temporary	NA	$9.95	Cashier
Maxwell, Delilah	5/29/2022	NA	Temporary	NA	$9.95	Cashier
Peterreins, Ella	5/31/2022	NA	Temporary	NA	$9.95	Cashier
O'Connell, Courtney	5/31/2022	NA	Temporary	NA	$11.00	ASP Assisant - Summer Program
Brooks, Benjamin	6/1/2022	NA	Temporary	NA	$12.00	Lifeguard
Rhode, Abby	6/1/2022	NA	Temporary	NA	$12.00	Lifeguard
Thompson, Luigi	6/1/2022	NA	Temporary	NA	$9.95	Service Desk
Leighton, Jessica	6/1/2022	NA	Temporary	NA	$10.25	ASP Assisant - Summer Program
Ottoson, Curt	6/2/2022	NA	FT	NA	$20.35	Distribution and Collection Operator
Bergersen, Carstsen	6/3/2022	PT<20	PT<20	$9.95	$11.05	Group Fitness Instructor
Engebretson, Molly	6/3/2022	NA	Temporary	NA	$9.95	Cashier
Olverson, Channing	6/4/2022	NA	Temporary	NA	$9.95	Cashier
Gonyo, Miranda	6/5/2022	NA	Temporary	NA	$9.95	Cashier
Minnaert, H John	6/6/2022	NA	Temporary	NA	$15.25	PT General Laborer
Hawkes, Aaron	6/6/2022	NA	Temporary	NA	$12.00	Lifeguard
Williams, Lane	6/9/2022	NA	Temporary	NA	$12.00	Lifeguard
Bern, Sutton	6/11/2022	NA	Temporary	NA	$12.00	Lifeguard
Keller, Ellie	6/13/2022	NA	Temporary	NA	$10.25	ASP Assisant - Summer Program
Hegg, Melissa	6/13/2022	NA	FT	NA	$25.31	Human Resource Specialist
Hasleton, Jennifer	6/13/2022	NA	FT	NA	$20.97	Administrative Assisant II

THE CITY OF MADISON

2022-2023 Retail (on-off sale) Malt Beverage & SD Farm Wine License Renewals

OWNER	**BUSINESS NAME**	**ADDRESS**
CESAR CORTEZ	TIENDA HISPANA	427 NW 2ND ST
DAKOTA BUTCHER - MADISON INC	DAKOTA BUTCHER	745B S WASHINGTON AVE
SODEXO AMERICA LLC	SODEXO AMERICA #10344	1205 N WASHINGTON AVE

flock safety

FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. ("**Flock**") and the customer identified below ("**Customer**") (each of Flock and Customer, a "**Party**"). This order form ("**Order Form**") hereby incorporates and includes the "GOVERNMENT AGENCY CUSTOMER AGREEMENT" attached (the "**Terms**") which describe and set forth the general legal terms governing the relationship (collectively, the "**Agreement**"). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the "**Effective Date**").

Customer: SD - Madison PD

Address: 116 W Center St
Madison, South Dakota 57042

Contact Name: Justin Meyer

Phone: (605) 480-5287

E-Mail:
justin.meyer@cityofmadisonsd.com

Expected Payment Method:

ACH / Check

Billing Contact:

(if different than above)

Initial Term: 24.00

Renewal Term: 24 Months

Pilot period: First 60 days of Initial Term; option to cancel contract at no cost. Initial Term invoice due after Pilot period.

Billing Term: Annual payment due Net 30 per terms and conditions

Name	Price	QTY	Subtotal
Flock Safety Advanced Search <25 Falcons	$2,500.00	1.00	$2,500.00
Falcon Flex	$3,000.00	2.00	$6,000.00
Falcon Camera	$2,500.00	8.00	$20,000.00
Professional Services - Falcon, Standard Implementation	$350.00	8.00	$2,800.00

(Includes one-time fees)

Year 1 Total: $31,300.00
Recurring Total: $28,500.00

This proposal expires in 30 days.

flock safety

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc	**Customer:**
By:	By:
Name:	Name: Justin Meyer
Title:	Title:
Date:	Date:

This proposal expires in 30 days.

RESOLUTION NO. 2022-26

A RESOLUTION TO DESIGNATE ARPA GRANT SIGNATORIES & CERTIFYING OFFICIALS

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA:

That Jameson Berreth, City Administrator, and Roy Lindsay, Mayor are designated as signatories, on behalf of the City of Madison, to sign ARPA Grant Agreements 2022G-ARP-163 and 2022G-ARP-164, and

That Jameson Berreth, City Administrator, and Roy Lindsay, Mayor are designated as the officials to certify, on behalf of the City of Madison, valid expenditures under the workplan with regard to the ARPA Grant.

Dated this ___ day of June, 2022.

CITY OF MADISON

____
Mayor

ATTEST: __________________________
Finance Officer

STATE OF SOUTH DAKOTA
BOARD OF WATER AND NATURAL RESOURCES
Grant Number 2022G-ARP-163

Sub-Recipient Agreement
Between

City of Madison	State of South Dakota, Acting through the South Dakota Conservancy District, Acting through the South Dakota Board of Water and Natural Resources, a governmental agency, and body politic and corporate of the State of South Dakota
116 West Center Street Madison SD 57042	523 East Capitol Avenue Pierre SD 57501-3182
Referred to as Sub-Recipient	Referred to as State

The State and Sub-Recipient hereby enter into this Agreement (hereinafter the "Agreement") for a grant award of Federal financial assistance to Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION

a. Sub-Recipient's name: City of Madison

b. Sub-Recipient's DUNS number and unique entity identifier: 16873997

c. Federal Award Identification Number (FAIN): SLFRP5319

d. Federal Award Date: 08/25/2021

e. Sub-award Period of Performance: Execution of Agreement through the 31st day of December 2026.

f. Amount of federal funds obligated to the Sub-Recipient by this Agreement: $1,907,720

g. Total amount of federal funds obligated to the Sub-Recipient: $1,907,720

h. Total amount of the federal award committed to the Sub-Recipient: $1,907,720

i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows:

The state and local fiscal recovery funds program authorized by the American Rescue Plan Act provides funding to support urgent Covid-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control; replace lost revenue for eligible state, local, territorial, and tribal governments to strengthen support for vital public services and help retain jobs; support immediate economic stabilization for households and businesses; to make necessary investments in water, sewer, and broadband infrastructure; and cover the cost of other eligible activities. activities to be performed: treasury will make direct payments to states (defined to include the district of Columbia), U.S. Territories (defined to include, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), tribes, metropolitan cities, counties, consolidated governments, and nonentitlement units of local government (through states)(collectively "eligible entities") to use the funding for the eligible purposes outlined in the program statute, treasury's implementing regulations, and guidance. end goal/expected outcomes: the state and local fiscal recovery funds program funding will: (1) provide the necessary assistance for households, small businesses, nonprofits, and impacted industries, such as tourism, travel, and hospitality to respond to the Covid-19 public health emergency or its negative impacts; (2) be used to cover premium pay to eligible workers of the governments performing essential work during the Covid-19 pandemic or used to provide grants to eligible employers that have eligible workers who perform essential work; (3) provide government services, to the extent covid-19 caused a reduction of revenues collected in the most recent full fiscal year of the government; or (4) make the necessary investments in water, sewer, or broadband infrastructure. intended beneficiaries: essential workers, households, small businesses, nonprofits, the governments of the eligible entities, the general public, etc. subrecipient activities: subrecipient activities are not known at this time.

j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: U.S. Treasury

k. CFDA No(s) and Name(s): 21.027 Coronavirus State and Local Fiscal Recovery Funds

l. Is the grant award for research and development (R&D)? YES ___ NO _X_

m. Indirect Cost Rate for federal award: 0.00%

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This Agreement shall be effective upon execution by all parties and will end on the 31st day of December, 2026 unless sooner terminated pursuant to the terms hereof. The timely and expeditious use of grant funds is necessary assure availability of American Rescue Plan Act of 2021 funds for the project. To assure the funds will be expended prior to federal deadline requirements the project milestone deadlines in sections (a) though (d) of this section are hereby incorporated into the period of performance.

a. Submit complete plans and specifications for the Project to the State on or before March 1, 2024;

b. Execute construction contracts on or before December 31, 2024;

c. Disbursements of 50 percent or more of the grant funds provided for this Project must be requested for reimbursement with qualifying eligible costs on or before June 1, 2026;

d. Disbursements of 90 percent or more of the grant funds provided for this Project must be requested for reimbursement with qualifying eligible costs on or before October 1, 2026; and

e. Final reimbursement request from Sub-Recipient must be submitted to State on or before December 1, 2026.

If the Sub-Recipient fails to meet the deadlines set forth in this section all undisbursed grant funds may be de-obligated and reverted back to the State for reallocation to other eligible projects at the sole discretion of the State. In the event that deadlines are met for only a portion of the Project, only that portion of the Project shall be eligible for grant funds. The grant amount will be adjusted based on the amount of the contract or contracts awarded in compliance with the deadlines in proportion to total construction cost for the Project as identified in the funding application.

No action or motion will be required by the Board of Water and Natural Resources to allow for the reduction of grant funds as set forth herein. The State will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all State ARPA grant funds.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

The Sub-Recipient agrees to use the funds to undertake a Sanitary and Storm Sewer Improvements project, which project shall be constructed in accordance with the workplan attached hereto as Exhibit A, and by this reference made part hereof. No expenditures may be incurred outside of the attached workplan without prior approval by the State or its designated agent. Eligible costs incurred prior to the effective grant award date are eligible for reimbursement, if incurred after March 3, 2021.

The State and the Sub-Recipient agree that all obligations under this Agreement are conditioned upon satisfactory compliance with the requirements outlined in the workplan which must be performed in compliance with the federal American Rescue Plan Act of 2021 (ARPA) and the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached hereto as Exhibit B and by this reference made a part hereof.

4. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of a Sanitary and Storm Sewer Improvements project and payment will be made by the State after the State reviews eligible project costs in a manner as described in section 9.

Federal Amount provided by State is $1,907,720

If the Sub-Recipient has pledged matching grant funds for the project from non-State ARPA funds, the State ARPA grant funds will not be disbursed until those matching grant funds or an equivalent amount is expended.

Once bids open for all construction contracts included in the Project, grant funds may be adjusted by the program. If the total contract amounts are five or more percent less than the estimated project construction and contingencies as set forth in the funding application budget sheet on page 3, lines 4, 5, and 10, the grant funds will be reduced proportionally.

The reduction percentage will be determined by dividing the total contract amount by the sum of lines 4, 5, and 10 of the budget sheet.

Sub-recipient is aware of the procurement requirements set forth in the ARPA, including those requirements for engineering procurement. In the event Sub-recipient has not complied with those engineering procurement requirements as referenced in ARPA and described more fully in 2 CFR 200.317 through 200.327, the State reserves the right to issue funds from other funding programs rather than ARPA grant funds. Sub-recipient further understands and agrees that Sub-recipient's failure to comply with the engineering procurement requirements as set forth herein would make ARPA grant funds unavailable for the engineering portion of the project, and therefore accepts the other program funds for such engineering procurement and in lieu of any additional demands against the state for grant funds of any type.

No action or motion will be required by the Board of Water and Natural Resources to allow for the reduction of grant funds as set forth herein. The State will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all State ARPA grant funds.

5. RISK ASSESSMENTS, MONITORING AND REMEDIES

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends $750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
% 500 East Capitol
Pierre, SD 57501-5070

If the Sub-Recipient expends less than $750,000 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the 9 months following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

a. A conflict of interest policy is enforced within the recipient's or Sub-Recipient's organization;

b. The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-Recipient's website;

c. An effective internal control system is employed by the recipient's or Sub-Recipient's organization; and

d. If applicable, the recipient or Sub-Recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or Sub-Recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

If Sub-recipient is a non-state agency they agree to disclose to the State, in writing, any conflicts of interest that exist under the Sub-recipient's conflict of interest policy. The State will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the OpenSD website.

In the event of a significant change in the conflict of interest policy, Sub-Recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-Recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT

a. Grant proceeds will be disbursed upon receipt of sub-recipient payment requests and invoices to support such requests, throughout the project and after determining that the requested payment and invoices are for costs that meet the eligibility outlined in the workplan.

b. The Sub-Recipient will designate, in writing, an official to certify on Sub-Recipient's behalf that the request submitted is correct and is a valid expenditure under the workplan.

c. Sub-Recipient will submit a signed request for disbursement along with invoices to support the request. The request for disbursement will be submitted to such person or persons as the State may designate for approval.

d. The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service for which the payment is sought. No funds will be disbursed until all fees owed by the Sub-Recipient to the Department of Agriculture and Natural Resources are paid.

e. All requests for disbursement for eligible costs under this Agreement not presented within ninety (90) days after the completion of the term of this Agreement or on or before December 1, 2026, are barred from payment.

B. STANDARD CLAUSES

10. ASSURANCE REQUIREMENTS:

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

11. COST PRINCIPLES:

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements) and 2 CFR Part 1500.

12. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice and the Sub-Recipient shall be obligated to reimburse the State for any funds theretofore improperly expended by or for the benefit of the Sub-Recipient, or any part thereof, and if not promptly paid the State may pursue all rights and remedies under any applicable laws or regulations. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

13. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

14. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

15. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

17. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Sub-Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

20. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

21. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

22. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

24. COMPLIANCE WITH EXECUTIVE ORDER 2020-01

By entering into this Agreement, Sub-Recipient certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification, and agrees such noncompliance may be grounds for termination of this Agreement.

25. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

26. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

The funding of this Sanitary and Storm Sewer Improvements project in no way obligates the State to provide future funding for design or construction of additional improvements.

The Sub-Recipient will comply and will insure that the engineer and construction contractor selected to oversee the project complies, with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

Sub-Recipient will construct the Project, or cause it to be constructed, to final completion with reasonable diligence in accordance with the approved plans and specifications and the approved Project scope for the grant.

Sub-Recipient will ensure that construction administration and inspection is done by or under the supervision of a professional engineer or architect licensed and registered in the State of South Dakota to help assure that the construction contractor's work conforms with the approved plans and specifications, and to furnish inspection and material testing reports, recommendations and such other information as the State may require. It is recognized and understood that the final responsibility of conformance with the plans and specifications is that of the construction contractor. The State has the right to monitor facility and design through on-site inspections from time to time.

27. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

As required by 2 CFR 200.216, recipients and sub-recipients, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, sub-recipients, and borrowers also may not use funds to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances: Obligating or expending funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

28. PROJECT REPRESENTATIONS AND COVENANTS.

The Sub-Recipient hereby represents and covenants that:

a. all construction on the Project has complied and will comply with applicable federal, state and local laws, regulations, ordinances, and standards, including specifically federal requirements that all of the iron and steel products used in the Project are to be produced in the United States;

b. all land surveys are conducted by a land surveyor registered in the State of South Dakota, and that the final plans and specifications are prepared under the supervision of and approved by a professional architect or engineer licensed and registered in the State of South Dakota.

c. the Project is the type of project permitted to be financed under the applicable Program, the Act, and the laws governing the issuance of the Grant.

29. REDUCTION OF PROJECT COSTS

If all or a portion of the Project is canceled or scaled back and the costs of the Project are thereby reduced, or if for any reason the Sub-Recipient will not require the full amount of the Grant, the Sub-Recipient shall promptly notify the State and return the portion of the Grant which will not be needed.

No action or motion will be required by the Board of Water and Natural Resources to allow for the reduction of grant funds as set forth herein. The State will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all State ARPA grant funds.

30. COMPLIANCE WITH THE DAVIS-BACON ACT

a. For projects in excess of $10 million all transactions regarding this agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable;

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor; and

c. Contractors are required to pay wages not less than once a week.

31. HOLD HARMLESS

The Sub-Recipient agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

No part of the funding provided hereunder may be utilized for the payment of costs associated with litigation directly or indirectly involving the Sub-Recipient or the Forcemain Improvement project. No member of the Sub-Recipient's governing body or other officers, agents, employees or immediate family members, shall receive direct personal benefit from this Agreement other than reasonable compensation for services rendered, expenses incurred in furtherance of the purposes herein authorized, or benefits received as a member of general public served by the Sub-Recipient.

32. FLOW DOWN

All "flow down" requirements are imposed on the subrecipient by the State to ensure that the award is used in accordance with Federal statutes, regulations and the terms of the award. The subrecipient is accountable to the State for compliance with Federal requirements. These requirements include, among others:

a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the ARPA compliance provisions.

c. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at 2 CFR 200.322. This provision does not apply to consulting services if the Sub-Recipient utilizes funds other than those provided by this Agreement to pay those costs.

d. Subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

e. Ensuring the Future is Made in All of America by All of America's Workers Recipients must comply with the "Build America, Buy America" provisions of the Infrastructure investment and Jobs Act and E.O. 14005 which provide that, as appropriate and to the extent consistent with law, the recipient must use all practicable means within their authority under a federal award to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products.)

D. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

Sub-Recipient Signature — Date

Jerry Soholt, Chair — Date

EXHIBIT A

The City of Madison is proposing to replace and rehabilitate clay sanitary sewer and brick manholes which are undersized and deteriorating. Madison proposes installation of approximately 8,500 feet of 8-inch PVC sewer main and 3,600 feet of 15-inch sewer main. The project will also include approximately 4,700 feet of CIPP lining and 3,500 of storm sewer of varying size. This project will be constructed in conjunction with the proposed water utilities project.

Proposed improvements will also include sanitary sewer service lines, manholes, fittings, storm inlets, road surfacing, and other necessary appurtenances.

EXHIBIT B

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. <u>Use of Funds.</u>

a. Sub-Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

b. Sub-Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

c. Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

2. <u>Reporting</u>. All recipients of federal funds must complete financial, performance, and compliance reporting and Sub-Recipient agrees to comply with any reporting obligations established by Treasury as they relateto this award. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1.

3. <u>Maintenance of and Access to Records</u>

a. Sub-Recipient shall maintain records and financial documents sufficient to evidence compliance with section603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Sub-Recipient in order to conduct audits or other investigations.

c. Records shall be maintained by Sub-Recipient for a period of three (3) years after all funds have been expended or returned to Treasury, whichever is later.

4. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

5. Conflicts of Interest. Sub-Recipient understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activityfunded under this award. Sub-Recipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

6. Compliance with Applicable Law and Regulations.

a. Sub-Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing.Sub-Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Sub-Recipient shall provide for such compliance by other parties in any agreements it enters intowith other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

   i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

   ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

   iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170 pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

   iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lowertier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

   v. Sub-Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

   vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

   vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

c. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity.) Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

7. Remedial Actions. In the event of Sub-Recipient's noncompliance with section 603 of the Act, other applicablelaws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, ifany, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as providedin section 603(e)of the Act.

RESOLUTION NO. 2022-27

RESOLUTION GIVING APPROVAL TO CERTAIN SEWER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

WHEREAS, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

WHEREAS, the City of Madison (the "City") currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Clean Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 1. <u>Definitions</u>. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this

Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

"Act" means South Dakota Codified Laws Chapter 9-40.

"Loan" means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

"Project" means the City of Madison Sanitary Improvements (Segment 1-6).

"Revenue Bond" means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City's obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

"System" means the City's system of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

SECTION 2. Declaration of Necessity and Findings.

2.1.1. Declaration of Necessity. The City hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

2.2. Findings. The City does hereby find as follows:

2.2.1. The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants and will make the City unable to comply with state and federal law.

2.2.2. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-2, and the federal Clean Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.3. The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, only the net income from the Project financed by the Revenue Bond be pledged for its payment.

SECTION 3. Authorization of Loan, Pledge of Revenue and Security.

3.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to $3,284,680 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

3.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

3.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed $3,284,680 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

3.4. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

SECTION 4. Special Charge or Surcharge for Revenue Bond.

4.1. The City does hereby create the Revenue Bond Special-Surcharge District (the "Surcharge District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

4.2. Rates and collection. The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

4.3. Initial Surcharge. The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due.

4.4. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

4.5. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 5. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

SECTION 6. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the sewer system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

6.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the City of Madison, South Dakota (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

6.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

6.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

(a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;

(b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

(c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or

(d) To be used for any other authorized municipal purpose designated by the Common Council.

(e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

SECTION 7. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

SECTION 8. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 9. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

SECTION 10. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

10.1. The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

10.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

10.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

10.4. The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

SECTION 11. Depositories. The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

SECTION 12. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in

Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 13. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

SECTION 14. Repeal of Resolution. At such time as the Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

SECTION 15. Authorization of City Officials. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

SECTION 16. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at Madison, South Dakota, this ____ day of ____________2022.

APPROVED:

____
Mayor

(SEAL)

Attest: ______________________________
Finance Officer

First reading: ________________
Published: ________________
Effective: ________________

STATE OF SOUTH DAKOTA
BOARD OF WATER AND NATURAL RESOURCES
Grant Number 2022G-ARP-164

Sub-Recipient Agreement
Between

City of Madison	State of South Dakota, Acting through the South Dakota Conservancy District, Acting through the South Dakota Board of Water and Natural Resources, a governmental agency, and body politic and corporate of the State of South Dakota
116 West Center Street Madison SD 57042	523 East Capitol Avenue Pierre SD 57501-3182
Referred to as Sub-Recipient	Referred to as State

The State and Sub-Recipient hereby enter into this Agreement (hereinafter the "Agreement") for a grant award of Federal financial assistance to Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION

a. Sub-Recipient's name: City of Madison

b. Sub-Recipient's DUNS number and unique entity identifier: 16873997

c. Federal Award Identification Number (FAIN): SLFRP5319

d. Federal Award Date: 08/25/2021

e. Sub-award Period of Performance: Execution of Agreement through the 31st day of December 2026.

f. Amount of federal funds obligated to the Sub-Recipient by this Agreement: $4,342,550

g. Total amount of federal funds obligated to the Sub-Recipient: $4,342,550

h. Total amount of the federal award committed to the Sub-Recipient: $4,342,550

i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows:

The state and local fiscal recovery funds program authorized by the American Rescue Plan Act provides funding to support urgent Covid-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control; replace lost revenue for eligible state, local, territorial, and tribal governments to strengthen support for vital public services and help retain jobs; support immediate economic stabilization for households and businesses; to make necessary investments in water, sewer, and broadband infrastructure; and cover the cost of other eligible activities. activities to be performed: treasury will make direct payments to states (defined to include the district of Columbia), U.S. Territories (defined to include, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), tribes, metropolitan cities, counties, consolidated governments, and nonentitlement units of local government (through states)(collectively "eligible entities") to use the funding for the eligible purposes outlined in the program statute, treasury's implementing regulations, and guidance. end goal/expected outcomes: the state and local fiscal recovery funds program funding will: (1) provide the necessary assistance for households, small businesses, nonprofits, and impacted industries, such as tourism, travel, and hospitality to respond to the Covid-19 public health emergency or its negative impacts; (2) be used to cover premium pay to eligible workers of the governments performing essential work during the Covid-19 pandemic or used to provide grants to eligible employers that have eligible workers who perform essential work; (3) provide government services, to the extent covid-19 caused a reduction of revenues collected in the most recent full fiscal year of the government; or (4) make the necessary investments in water, sewer, or broadband infrastructure. intended beneficiaries: essential workers, households, small businesses, nonprofits, the governments of the eligible entities, the general public, etc. subrecipient activities: subrecipient activities are not known at this time.

j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: U.S. Treasury

k. CFDA No(s) and Name(s): 21.027 Coronavirus State and Local Fiscal Recovery Funds

l. Is the grant award for research and development (R&D)? YES ___ NO _X_

m. Indirect Cost Rate for federal award: 0.00%

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This Agreement shall be effective upon execution by all parties and will end on the 31st day of December, 2026 unless sooner terminated pursuant to the terms hereof. The timely and expeditious use of grant funds is necessary assure availability of American Rescue Plan Act of 2021 funds for the project. To assure the funds will be expended prior to federal deadline requirements the project milestone deadlines in sections (a) though (d) of this section are hereby incorporated into the period of performance.

a. Submit complete plans and specifications for the Project to the State on or before March 1, 2024;

b. Execute construction contracts on or before December 31, 2024;

c. Disbursements of 50 percent or more of the grant funds provided for this Project must be requested for reimbursement with qualifying eligible costs on or before June 1, 2026;

d. Disbursements of 90 percent or more of the grant funds provided for this Project must be requested for reimbursement with qualifying eligible costs on or before October 1, 2026; and

e. Final reimbursement request from Sub-Recipient must be submitted to State on or before December 1, 2026.

If the Sub-Recipient fails to meet the deadlines set forth in this section all undisbursed grant funds may be de-obligated and reverted back to the State for reallocation to other eligible projects at the sole discretion of the State. In the event that deadlines are met for only a portion of the Project, only that portion of the Project shall be eligible for grant funds. The grant amount will be adjusted based on the amount of the contract or contracts awarded in compliance with the deadlines in proportion to total construction cost for the Project as identified in the funding application.

No action or motion will be required by the Board of Water and Natural Resources to allow for the reduction of grant funds as set forth herein. The State will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all State ARPA grant funds.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

The Sub-Recipient agrees to use the funds to undertake a Drinking Water System Improvements project, which project shall be constructed in accordance with the workplan attached hereto as Exhibit A, and by this reference made part hereof. No expenditures may be incurred outside of the attached workplan without prior approval by the State or its designated agent. Eligible costs incurred prior to the effective grant award date are eligible for reimbursement, if incurred after March 3, 2021.

The State and the Sub-Recipient agree that all obligations under this Agreement are conditioned upon satisfactory compliance with the requirements outlined in the workplan which must be performed in compliance with the federal American Rescue Plan Act of 2021 (ARPA) and the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached hereto as Exhibit B and by this reference made a part hereof.

4. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of a Drinking Water System Improvements project and payment will be made by the State after the State reviews eligible project costs in a manner as described in section 9.

Federal Amount provided by State is $4,342,550

If the Sub-Recipient has pledged matching grant funds for the project from non-State ARPA funds, the State ARPA grant funds will not be disbursed until those matching grant funds or an equivalent amount is expended.

Once bids open for all construction contracts included in the Project, grant funds may be adjusted by the program. If the total contract amounts are five or more percent less than the estimated project construction and contingencies as set forth in the funding application budget sheet on page 3, lines 4, 5, and 10, the grant funds will be reduced proportionally.

The reduction percentage will be determined by dividing the total contract amount by the sum of lines 4, 5, and 10 of the budget sheet.

Sub-recipient is aware of the procurement requirements set forth in the ARPA, including those requirements for engineering procurement. In the event Sub-recipient has not complied with those engineering procurement requirements as referenced in ARPA and described more fully in 2 CFR 200.317 through 200.327, the State reserves the right to issue funds from other funding programs rather than ARPA grant funds. Sub-recipient further understands and agrees that Sub-recipient's failure to comply with the engineering procurement requirements as set forth herein would make ARPA grant funds unavailable for the engineering portion of the project, and therefore accepts the other program funds for such engineering procurement and in lieu of any additional demands against the state for grant funds of any type.

No action or motion will be required by the Board of Water and Natural Resources to allow for the reduction of grant funds as set forth herein. The State will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all State ARPA grant funds.

5. RISK ASSESSMENTS, MONITORING AND REMEDIES

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends $750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
% 500 East Capitol
Pierre, SD 57501-5070

If the Sub-Recipient expends less than $750,000 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the 9 months following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

a. A conflict of interest policy is enforced within the recipient's or Sub-Recipient's organization;

b. The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-Recipient's website;

c. An effective internal control system is employed by the recipient's or Sub-Recipient's organization; and

d. If applicable, the recipient or Sub-Recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or Sub-Recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

If Sub-recipient is a non-state agency they agree to disclose to the State, in writing, any conflicts of interest that exist under the Sub-recipient's conflict of interest policy. The State will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the OpenSD website.

In the event of a significant change in the conflict of interest policy, Sub-Recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-Recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT

a. Grant proceeds will be disbursed upon receipt of sub-recipient payment requests and invoices to support such requests, throughout the project and after determining that the requested payment and invoices are for costs that meet the eligibility outlined in the workplan.

b. The Sub-Recipient will designate, in writing, an official to certify on Sub-Recipient's behalf that the request submitted is correct and is a valid expenditure under the workplan.

c. Sub-Recipient will submit a signed request for disbursement along with invoices to support the request. The request for disbursement will be submitted to such person or persons as the State may designate for approval.

d. The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service for which the payment is sought. No funds will be disbursed until all fees owed by the Sub-Recipient to the Department of Agriculture and Natural Resources are paid.

e. All requests for disbursement for eligible costs under this Agreement not presented within ninety (90) days after the completion of the term of this Agreement or on or before December 1, 2026, are barred from payment.

B. STANDARD CLAUSES

10. ASSURANCE REQUIREMENTS:

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

11. COST PRINCIPLES:

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements) and 2 CFR Part 1500.

12. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice and the Sub-Recipient shall be obligated to reimburse the State for any funds theretofore improperly expended by or for the benefit of the Sub-Recipient, or any part thereof, and if not promptly paid the State may pursue all rights and remedies under any applicable laws or regulations. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

13. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

14. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

15. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

17. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Sub-Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

20. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

21. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

22. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

24. COMPLIANCE WITH EXECUTIVE ORDER 2020-01

By entering into this Agreement, Sub-Recipient certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification, and agrees such noncompliance may be grounds for termination of this Agreement.

25. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

26. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

The funding of this Drinking Water System Improvements project in no way obligates the State to provide future funding for design or construction of additional improvements.

The Sub-Recipient will comply and will insure that the engineer and construction contractor selected to oversee the project complies, with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

Sub-Recipient will construct the Project, or cause it to be constructed, to final completion with reasonable diligence in accordance with the approved plans and specifications and the approved Project scope for the grant.

Sub-Recipient will ensure that construction administration and inspection is done by or under the supervision of a professional engineer or architect licensed and registered in the State of South Dakota to help assure that the construction contractor's work conforms with the approved plans and specifications, and to furnish inspection and material testing reports, recommendations and such other information as the State may require. It is recognized and understood that the final responsibility of conformance with the plans and specifications is that of the construction contractor. The State has the right to monitor facility and design through on-site inspections from time to time.

27. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

As required by 2 CFR 200.216, recipients and sub-recipients, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, sub-recipients, and borrowers also may not use funds to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances: Obligating or expending funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

28. PROJECT REPRESENTATIONS AND COVENANTS.

The Sub-Recipient hereby represents and covenants that:

a. all construction on the Project has complied and will comply with applicable federal, state and local laws, regulations, ordinances, and standards, including specifically federal requirements that all of the iron and steel products used in the Project are to be produced in the United States;

b. all land surveys are conducted by a land surveyor registered in the State of South Dakota, and that the final plans and specifications are prepared under the supervision of and approved by a professional architect or engineer licensed and registered in the State of South Dakota.

c. the Project is the type of project permitted to be financed under the applicable Program, the Act, and the laws governing the issuance of the Grant.

29. REDUCTION OF PROJECT COSTS

If all or a portion of the Project is canceled or scaled back and the costs of the Project are thereby reduced, or if for any reason the Sub-Recipient will not require the full amount of the Grant, the Sub-Recipient shall promptly notify the State and return the portion of the Grant which will not be needed.

No action or motion will be required by the Board of Water and Natural Resources to allow for the reduction of grant funds as set forth herein. The State will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all State ARPA grant funds.

30. COMPLIANCE WITH THE DAVIS-BACON ACT

a. For projects in excess of $10 million all transactions regarding this agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable;

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor; and

c. Contractors are required to pay wages not less than once a week.

31. HOLD HARMLESS

The Sub-Recipient agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

No part of the funding provided hereunder may be utilized for the payment of costs associated with litigation directly or indirectly involving the Sub-Recipient or the Forcemain Improvement project. No member of the Sub-Recipient's governing body or other officers, agents, employees or immediate family members, shall receive direct personal benefit from this Agreement other than reasonable compensation for services rendered, expenses incurred in furtherance of the purposes herein authorized, or benefits received as a member of general public served by the Sub-Recipient.

32. FLOW DOWN

All "flow down" requirements are imposed on the subrecipient by the State to ensure that the award is used in accordance with Federal statutes, regulations and the terms of the award. The subrecipient is accountable to the State for compliance with Federal requirements. These requirements include, among others:

a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the ARPA compliance provisions.

c. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at 2 CFR 200.322. This provision does not apply to consulting services if the Sub-Recipient utilizes funds other than those provided by this Agreement to pay those costs.

d. Subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

e. Ensuring the Future is Made in All of America by All of America's Workers Recipients must comply with the "Build America, Buy America" provisions of the Infrastructure investment and Jobs Act and E.O. 14005 which provide that, as appropriate and to the extent consistent with law, the recipient must use all practicable means within their authority under a federal award to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products.)

D. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

Sub-Recipient Signature	Date
Jerry Soholt, Chair	Date

EXHIBIT A

The City of Madison is proposing to replace deteriorating and undersized water main on approximately 34 city blocks and loop the distribution across Highway 34 to provide system hydraulics and water quality. Approximately 21,000 feet of watermain of various size will be installed in this project. Segments 1, 2, 5, and 6 will be done in conjunction with the sanitary sewer and storm sewer project.

Proposed improvements will also include water service lines, hydrants, fittings, valves, road surfacing, and other necessary appurtenances.

EXHIBIT B

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.

a. Sub-Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

b. Sub-Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

c. Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

2. Reporting. All recipients of federal funds must complete financial, performance, and compliance reporting and Sub-Recipient agrees to comply with any reporting obligations established by Treasury as they relateto this award. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1.

3. Maintenance of and Access to Records

a. Sub-Recipient shall maintain records and financial documents sufficient to evidence compliance with section603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Sub-Recipient in order to conduct audits or other investigations.

c. Records shall be maintained by Sub-Recipient for a period of three (3) years after all funds have been expended or returned to Treasury, whichever is later.

4. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

5. Conflicts of Interest. Sub-Recipient understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activityfunded under this award. Sub-Recipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

6. Compliance with Applicable Law and Regulations.

a. Sub-Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing.Sub-Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Sub-Recipient shall provide for such compliance by other parties in any agreements it enters intowith other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

   i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

   ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

   iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170 pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

   iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lowertier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

   v. Sub-Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

   vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

   vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

c. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity.) Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

7. Remedial Actions. In the event of Sub-Recipient's noncompliance with section 603 of the Act, other applicablelaws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, ifany, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as providedin section 603(e)of the Act.

RESOLUTION NO. 2022-28

RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, together with extensions, additions, and necessary appurtenances; and,

WHEREAS, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

WHEREAS, the City of Madison (the "City") currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Drinking Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 1. <u>Definitions</u>. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

"Act" means South Dakota Codified Laws Chapter 9-40.

"Loan" means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

"Project" means the City of Madison Utility Improvements (Segment 1-6) Project.

"Revenue Bond" means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City's obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

"System" means the City's system of waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

SECTION 2. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The City hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

2.2. Findings. The City does hereby find as follows:

2.2.1. The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

2.2.2. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.3. The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the Project financed by the Revenue Bond be pledged for its payment.

SECTION 3. Authorization of Loan, Pledge of Revenue and Security.

3.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to $7,315,950 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

3.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the City Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

3.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed $7,315,950 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

3.4. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

SECTION 4. Special Charge or Surcharge for Revenue Bond. The City does hereby create the Revenue Bond Special-Surcharge District (the "Surcharge District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

4.1. Rates and collection. The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

4.2. Initial Surcharge. The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal, interest and Administrative Surcharge on the Revenue Bond when due.

4.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

4.4. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 5. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

SECTION 6. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the City and shall be used solely for the following respective purposes until payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond:

6.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the City of Madison, South Dakota (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

6.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

6.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

(a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;

(b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

(c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or

(d) To be used for any other authorized municipal purpose designated by the Common Council.

(e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

SECTION 7. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

SECTION 8. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 9. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

SECTION 10. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

10.1. The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

10.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

10.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

10.4. The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

SECTION 11. Depositories. The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

SECTION 12. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 13. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

SECTION 14. Repeal of Resolution. At such time as the Project Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

SECTION 15. Authorization of City Officials. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

SECTION 16. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at Madison, South Dakota, this ____ day of ____________ 2022.

APPROVED:

____
Mayor

(SEAL)

Attest: ________________________________
City Finance Officer

Adopted: ________________
Published: ________________
Effective: ________________

RESOLUTION NO. 2022-29

RESOLUTION SETTING WATER, SEWERS AND SEWAGE DISPOSAL FEES, RATES, CHARGES

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA:

That the water, sewer, and sewage disposal fees, rates and charges be set as follows:

User charges.

(a) The following user charges (including base and a surcharge pledged to debt service bonds for improvements to the wastewater infrastructure and non-bonded wastewater infrastructure improvements) are hereby established for consumers using the municipal sewer system of the City and billed on a monthly basis:

	Base Charge	*Surcharge*	*Total*
Fixed fee per month - residential	16.50	$6.00	$22.50
Fixed fee per month - commercial/industrial	$39.00	$6.00	$45.00
Volume fee per one hundred cubic feet			$ 4.01/unit
BOD			$ 0.21/lb.
TSS[5]			$ 0.18/lb.

(b) In addition to the above fees, all services after the first service that are connected to a master meter shall be charged a fee of $15.00 per dwelling unit.

(c) All customers residing outside of the City limits of the City of Madison shall pay fifty percent (50%) abovethe aforesaid rates.

(d) Residential volume fee shall be based on a monthly average derived from water consumption during theperiod of November, December, January and February.

(e) Commercial/industrial consumers may have sprinkler systems separately metered to avoid sewer charges onthat usage. Additional monthly user charges will be billed accordingly.

Rates and charges.

(a) The following rates (including a base rate and a surcharge pledged to debt service bonds for improvementsto the water infrastructure and non-bonded water infrastructure improvements) are hereby established for consumers taking water from the municipal water system of the City and billed on a monthly basis:

A base rate (determined by meter size) at a unit rate of $1.957 per hundred cubic feet and a surcharge basedon varying amounts required by each bond which totals $1.186 per hundred cubic feet calculated on an equivalent meter size ratio.

Meter Size	*Base Rate*	*Surcharge*	*Total*
5/8" & 3/4"	$16.56	$10.04	*$26.60*
1"	$30.04	$29.98	*$60.02*
1 1/4"	$43.65	$43.57	*$87.22*
1 1/2"	$64.41	$64.33	*$128.74*
2"	$113.01	$110.26	*$223.27*
3"	$258.41	$243.97	*$502.38*
4"	*$522.02*	*$371.02*	*$893.04*

(b) In addition to the above base rate, all services after the first service that are connected to a master meter shall be charged a base rate of $13.14 per dwelling unit plus a surcharge of $4.96 per dwelling unit.

(c) All metered water consumed inside the city limits shall be charged at a rate of $2.559 per hundred cubicfeet.

(d) All customers residing outside of the City limits of the City of Madison shall pay fifty percent (50%) abovethe aforesaid rates.

(e) Bulk tank loads purchased at the water treatment plant will be charged $3.00 per 1,000 gallons.

(f) The surcharge is comprised of the following elements:

Meter Size	*Non-Bonded*	*2013 Water Trmt Plant Bond*	*Rural Dev Bond*	*Total Surcharge*
5/8" & 3/4"	$0.69	$3.83	$5.52	$10.04
1"	$2.05	$11.45	$16.48	$29.98
1 1/4"	$2.98	$16.64	$23.95	$43.57
1 1/2"	$4.39	$24.57	$35.37	$64.33
2"	$7.53	$42.12	$60.61	$110.26
3"	$16.66	$93.19	$134.12	$243.97
4"	$25.34	$141.71	$203.97	$371.02

(g) The surcharge shall remain in effect until the date on which the Rural Development Project bond and anyobligations issued or incurred to refund the bond are paid in full, now scheduled to be year-end 2063.

(h) Rates and charges as imposed under this resolution shall be reflected on utility bills mailed to users in June 2022 and thereafter and due and payable in July 2022 and thereafter.

(i) **Waste Water USDA Loan 2021.** In addition to the other charges, the City hereby establishes a surcharge of $6.00 payable by each customer of its system who receives or benefits from the services of the project financed by the USDA loan with the bond. The collection of the surcharge shall start on May 1, 2022. The surcharge shall remain in effect until such time as the borrower bond is paid in full, it shall be collected at the same time as other charges of the system, and establish a surcharge account to segregate the income from other system income for book keeping purposes to be pledged to the United States of America. The surcharge shall be reviewed from year to year and modified in order to provide the required debt coverage and funding of a required reserve.

(j) **Clean Water SRF Loan 2022.** In addition to the other charges, the City hereby establishes a surcharge of $5.45 payable by each customer of its system who receives or benefits from the services of the project financed by the 2022-Clean Water SRF loan with the borrower bond. The collection of the surcharge shall start on January 1st, 2024. The surcharge shall remain in effect until such time as the borrower bond is paid in full, it shall be collected at the same time as other charges of the system, and establish a surcharge account to segregate the income from other system income for book keeping purposes to be pledged to the South Dakota Conservancy District. The surcharge shall be reviewed from year to year and modified in order to provide the required 110 percent debt coverage.

(k) **Drinking Water SRF Loan 2022.** In addition to the other charges, the City hereby establishes a surcharge of $11.45 payable by each customer of its system who receives or benefits from the services of the project financed by 2022-Drinking Water SRF loan with the borrower bond. The collection of the surcharge shall start on January 1st, 2024. The surcharge shall remain in effect until such time as the borrower bond is paid in full, it shall be collected at the same time as other charges of the system, and establish a surcharge account to segregate the income from other system income for book keeping purposes to be pledged to the South Dakota Conservancy District. The surcharge shall be reviewed from year to year and modified in order to provide the required 110 percent debt coverage.

Adopted this __ day of June, 2022.

____
Mayor, City of Madison

Attest: __________________________
City Finance Officer

Published once at the approximate cost of $__.

First District Association of Local Governments
124 1st Ave NW ■ PO Box 1207 ■ Watertown, SD 57201
Phone: (605) 882-5115 Fax: (605) 882-5049
Serving counties and communities for over 51 years

Letter of Understanding

This letter of understanding acknowledges that the First District Association of Local Governments (District) will, at the request of the City of Madison (City), assist the City with the following work activities associated with application and administration of South Dakota Department of Agriculture and Natural Resources (SDDANR) State Revolving Loan Funds (SRF) and American Rescue Plan Act (ARPA) funds related to the replacement of poor and undersized watermains in approximately 34 city blocks; the installation of a new watermain to provide a loop across Highway 34; and to replace and rehabilitate clay sanitary sewer collection piping and brick manholes in approximately 18 city blocks. The city is also replacing and adding storm sewer inlets and piping to improve collection and conveyance of storm sewer in areas where other water and sanitary utility improvements are scheduled

The District will:

1. Assist in the development of the Application
2. Assist in the administration of the SRF loan.

   a. Attend bid openings
   b. Attend pre-construction meetings
   c. Davis-Bacon Wage review
   d. Assist with project draw downs
   e. Act as a liaison between the City and SDDANR
   f. Project closeout

The District will not charge the City for the above identified services.

5/19/2022

Executive Director First District Association of Local Governments	Date	Mayor City of Madison	Date

C462024-03 – DW Improvements
C461024-05 – Sanitary Improvements

RESOLUTION NO. 2022-30

RESOLUTION APPROVING AND RECOMMENDING OF TAX INCREMENTAL DISTRICT PLAN NUMBER THREE, CITY OF MADISON

WHEREAS, the Planning Commission of City of Madison, South Dakota, received an application to create a Tax Incremental District and thereafter prepared a Notice of Hearing held on May 31st, 2022, advising interested parties that they were being given a reasonable opportunity to express their views on the proposed creation of a Tax Incremental District on real property consisting of the following parcels:

District Legal Description:

The real property to be located within the Tax Increment District is within the boundaries of the City of Madison and described as follows:

LOT 5 OF SCHULTZ'S ADDITION IN THE N1/2 OF SECTION 18, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

WHEREAS, such Notice was published in the official newspapers in City of Madison not less than ten (10) nor more than thirty (30) days from the date of the hearing which was held On May 31st, 2022

WHEREAS, a copy of the Notice was sent prior to publication by first-class mail to the Chief Executive Officers of the following taxing entities:

City of Madison
Lake County
Madison Central School District
Water Development District

WHEREAS, a hearing was held on May 31st, 2022, as provided in such Notice, and all interested parties were allowed a reasonable opportunity to be heard on the proposed Tax Incremental District Three plan;

NOW THEREFORE, BE IT RESOLVED by the City Commission of City of Madison, South Dakota:

1. **Authority and Declaration of Necessity.** The CityCommission declares the necessity for the approval of Tax Incremental District Number Three plan, City of Madison, Lake County (hereinafter sometimes referred to as the "District"), pursuant to SDCL Chapter 11-9, and finds that the improvement of the area within the District are likely to enhance significantly the value of substantially all of the other real property in the District and is necessary for economic development within the County and the City of Madison

2. **Findings.** The Planning Commission finds that there is statutory authority to refer said district to the Madison City Commission for their consideration and that all notice requirements have been met and all findings required by statute are hereby made.

   A. The proposed improvements will create new jobs and diversify the overall economic base of the City of Madison through commercial and housing opportunities.
   B. The South Dakota Department of Revenue has reviewed the TIF Plan and classified the Tax Increment District Three of City of Madison to be Economic Development.
   C. Not less than twenty-five percent, by area, of the real property within the district is a blighted area as defined under SDCL 11-9-11.
   D. At least fifty percent of the real property within the district will stimulate and develop the general economic welfare and prosperity of the state through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources development
   E. The improvement of the area is likely to significantly enhance the value of substantially all other real property in the district;
   F. The aggregate assed value of the taxable property does not exceed 10% of the total assessed value of all taxable property in the municipality per SDCL 11-9-7

3. **Boundaries of District**. The Boundaries of the district are determined to be as follows:

   LOT 5 OF SCHULTZ'S ADDITION IN THE N1/2 OF SECTION 18, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

4. **Recommendation of Tax Increment Plan.** The Madison City Commission hereby adopts the Tax Increment Plan Number Three.

Dated this __th day of June, 2022.

CITY OF MADISON

____
Mayor

ATTEST: ________________________
Finance Officer

Published once at the approximate cost of $__.

TAX INCREMENT DISTRICT #3

Submitted by:
PP6 Senior Living, LLC

May 2022

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INTRODUCTION – THE PROJECT

Tax Increment Financing (TIF) is an incentive utilized by local governments to attract private development and investment. New investment equals new jobs, more customers, and in turn, more investment opportunity. The incentive can also help attract and retain existing businesses and workers that might otherwise find more attractive options elsewhere. The jobs and additional investment, both private and public, mean more money for the community. Tax Increment Financing helps to overcome costs that often prevent redevelopment and private investment from occurring in the community. As a result, the TIF area itself improves and property values increase.

Specifically, money for improvements and other incentives comes from the growth in property valuations and the corresponding property tax revenues — the tax increment. A tax increment is the difference between the amount of property valuation present within the TIF district before TIF district designation and the amount of property valuation increase due to the creation of a TIF district. Property taxes collected on the original valuation existing in the TIF at the time of its designation continue to be distributed to the city, school district, county and all other taxing districts in the same manner as if the TIF district did not exist. Only property taxes collected as a result of the incremental increase in the value of these properties after formation of the TIF district are available for use by the counties or cities to fund projects costs in the TIF district.

In addition to increasing property valuation, creating a Tax Increment District for the benefit of economic development can mean retaining and creating more jobs. Today's business climate allows corporations the flexibility to call any state in the union their home. It is up to local communities to attract and retain companies to their communities. Using Tax Increment Financing is one of the most powerful economic development tools to help communities achieve their goals.

A local government, per South Dakota Codified Law, Chapter 11-9, can designate a specific area within its boundaries as a redevelopment area appropriate for a TIF district and prepare a plan for development. TIF projects must be recommended for approval by the County or City Planning Commission and the County or City Commission.

The primary objective of TIF #3 is to create a senior living community development within the City of Madison that provides three continuing levels of care within one community. The three levels of resident care provided will be independent senior living, assisted senior living, and memory care. The proposed project consists of a two phased build out: Phase I is the senior living community and Phase II will be the addition of a multi-unit facility within the same site.

Kirk Simet is the founder and CEO of SLH Holdings which is an asset holding and real estate development company based out of Brookings, SD. Kirk's 40+ years of combined development, marketing, and sales expertise led to the formation of the full-service firms SLH Holdings and HME Management. SLH primarily focuses on real property in the Senior Living, Multi-Family, Commercial, and Residential markets and has over 20 successful projects in South Dakota, Minnesota, and North Dakota. HME manages all property, marketing, design, construction, accounting, administrative, property management and human relation functions for SLH's various entities. See page 4 for recent projects by the Developer.

HME conducted two Senior Living Demand Assessments to understand the demand factor in Lake County and the surrounding primary market area. Viewpoint Consulting Group, located in Greenfield, MN, did the Initial Demand Assessment for Senior Housing in the region. Additionally, a Senior Living Statewide Assessment was conducted in-house to assess the needs across the state. These studies looked at existing facilities, demographics, and the South Dakota 2017-2019 State Plan on Aging to ascertain the expected market demand. Based upon these assessments, it is predicted that by 2035, the estimated number of senior population (65+) will increase in South Dakota by 84%. In Lake County, this cohort will make up over 20% of the population. As this region continues to grow and thrive housing for all its residents is critical.

This Project accomplishes two primary goals; job creation and housing. Providing housing for a growing market and population sector along with creating jobs and opportunities to the area are critical to a thriving and growing community. The estimated annual economic impact of $1,200,000 in payroll (growing up to $1.4 at full capacity) based on the creation of 20+ jobs. Housing is a necessary infrastructure to attract incoming citizens and to keep family members present and close to healthcare and loved ones. This facility will provide the next steps in the housing continuum and open additional preexisting homes for younger families.

The proposed Madison Senior Living Community, housing up to 50 residents, will include the following:

- A core facility of approximately 67,000 sq ft located adjacent to the hospital
- Both Assisted and Independent Living units, offering a variety of amenities, including dining room, lounge, multi-purpose room, exercise room, and resident laundry rooms
- 14 tenantt garages
- 24 Memory Care units will operate off site at newly renovated Heritage Sr. Living

A senior living community of this size and type will benefit the surrounding community and the city through senior care, employment, and community presence as it has done in previous locations.

Developer's Recent Projects:

Peaceful Pines Senior Living – Rapid City, SD

- Independent living, assisted living, and memory care
- 121 resident apartments

One & Two Willow Creek Apartments – Watertown, SD

- Upscale apartments
- Over six different floor plans
    - 78units
    - 2 bed - 2 bath / 1bed - 1 bath
    - Garages

Edgewood Assisted Living

- Watertown, Sisseton, Flandreau, Pierre, Sioux Falls, SD
- Mandan, ND

The property upon which this Tax Incremental District (TID) is proposed to be implemented is located within City of Madison, South Dakota.

As such, the creation of City of Madison TIF #3 shall be conditioned upon the creation of the District by resolution, and the establishment of the TID boundaries and approval of the TID Project plan by the City of Madison Planning and Zoning Commission.

The purpose of this Plan, to be implemented by City of Madison, South Dakota is to satisfy the requirements for a Tax Increment District Number Three as specified in SDCL Chapter 11-9. The principal purpose of the Plan is to define eligible property and to define a Tax Increment Plan for funding eligible activities in an eligible area of the City. The Plan will describe the boundary, estimated costs, feasibility and fiscal impact of the District.

This Plan was prepared for adoption by the City Commissioners in recognition that the area requires a coordinated, cooperative strategy, with financing possibilities, to promote economic development and accomplish the City's development objectives for improving the continued viability by promoting economic development within the City.

The driving interest in the establishment of this Plan is to offer tax increment financing as a tool to stimulate and leverage private sector development and redevelopment, and to promote economic development throughout the District.

The intention of this TIF Project is to construct senior living community development in the City of Madison to provide continuing levels of care within one community. The three levels of residence provided will be independent senior living, assisted senior living, and memory care.

This project accomplishes two primary goals; of job creation and housing by providing housing for a growing market and population sector along with creating job expansion and opportunities to the area. Housing is a necessary infrastructure to attract incoming citizens and to keep family members present and close to healthcare and loved ones. This facility will provide the next steps in the housing continuum and open additional preexisting homes for younger families.

The economic impact of this project will be ongoing, starting with an initial investment of $16,000,000. This will result in a substantial increase for real-estate tax revenue upon completion of the project, currently estimated at over $175,000.

General Definitions

The following terms found in this Plan are defined as the following:

"Base" or "Tax Incremental Base" means the aggregate assessed value of all taxable property located within a Tax Incremental District on the date the district is created, as determined by SDCL § 11-9-20.

"Blighted or Economic Development" SDCL § 11-9-8.

(1) Not less than twenty-five percent, by area, of the real property within the district is a blighted area or not less than fifty percent, by area, of the real property within the district will stimulate and develop the general economic welfare and prosperity of the state through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources; and

(2) The improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district

"City Commission" means the City Commission of Madison, South Dakota

"Calendar Year" means the starting date of January 1 to an ending date of December 31st.

"Department of Revenue" means the South Dakota Department of Revenue.

"Developer" means HME Senior Living

"Developer's Agreement" means the agreement between Developer and City of Madison concerning this Tax Incremental District.

"District" means the Tax Incremental District.

"Economic Development" means all powers expressly granted and reasonably inferred pursuant to SDCL § 9-54.

"Fiscal year" means that fiscal year for City of Madison

"Generally Applicable Taxes" shall have the same meaning as set forth in 26 CFR § 1.141-4(e).

"Governing body" means the City of Madison, South Dakota

"Grant" means the transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the municipality;

"Infrastructure Improvements" means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, for the benefit of or for the protection of the health, welfare, or safety of the public generally.

"Planning Commission" means the City of Madison Planning Commission

"Plan" means this Project Plan.

"Project Costs" means any expenditure or monetary obligations by City of Madison, whether made, estimated to be made, incurred or estimated to be incurred, which are listed as Project Costs herein will include any costs incidental thereto but diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by City of Madison in connection with the implementation of this Plan.

"Project Plan" means a properly approved Plan for the development or redevelopment of a tax incremental district including all properly approved amendments thereto as recommended pursuant to SDCL § 11-9-13.

"Public Works" means the Infrastructure Improvements, the acquisition by purchase or condemnation of real and personal property within the Tax Incremental District and the sale, lease, or other disposition of such property to private individuals, partnerships, corporations, or other entities at a price less than the cost of such acquisition which benefit or further the health, safety, welfare and economic development of the City and Project Costs.

"Taxable Property" means all real taxable property located in a Tax Incremental District.

"Tax Incremental District" means a contiguous geographic area within a City defined and created by resolution of the governing body and named City of Madison Tax Incremental District #3.

"Tax Increment Valuation" is the total value of the Tax Incremental District minus the tax incremental base pursuant to § 11-9-19.

"Tax Increment Law" means South Dakota Codified Laws Chapter 11-9.

Representatives of the Developer have approached officials of City of Madison regarding the possibility of creating a Tax Incremental Financing District ("TID") to assist in the Project Costs within the Plan on land located within City of Madison.

The primary objective of TIF #3 is to create a senior living community development which provides assisted and independent living within one community, while utilizing an existing, well-known facility that will serve the needs of residents in memory care. It is expected that this development will benefit the surrounding community, not only by providing a unique continuing care campus for aging residents to continue to live in Madison, but also by keeping those residents close to family and friends within their familiar community. A second phase to the overall project would include the development and construction of a multi-unit facility for aging-in-place residents. These units may have access to the nearby amenities and should add to the overall community atmosphere.

This major investment into the community will have long-term benefits including senior care, new employment opportunities, a stronger community presence, and an estimated annual economic impact of $1,400,000 once at full capacity.

Property Within Tax Increment #3

The real property to be located within the Tax Increment District is within the City of Madison, described as follows:

LOT 5 OF SCHULTZ'S ADDITION IN THE N1/2 OF SECTION 18, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., CITY OF MADISON, LAKE COUNTY, SOUTH

TAXABLE VALUE OF CITY OF MADISON

State law requires that tax increment districts cannot exceed ten percent of the taxable value of a municipality. The 2022 Taxes Payable value for City of Madison is $383,777,433. The base value of the taxable property for inclusion into this Tax Incremental District #3, as estimated but not yet verified by Lake County Director of Equalization, is $28,200.

11-9-7. Maximum percentage of taxable property in municipality permitted in districts. In order to implement the provisions of this chapter, the resolution required by § 11-9-5 shall contain a finding that the aggregate assessed value of the taxable property in the district plus the **tax incremental base of all other existing districts does not exceed ten percent** of the total assessed value of taxable property in the municipality.

There are currently two other active TIF Districts in City of Madison.

CITY OF MADISON

Tax Increment District	Base Value
1	$ 834,600
2	$ 25,100
TOTAL	**$ 859,700**

Madison City Current Taxable Value	$ 239,178,423
All TIF Base Value must be less than 10%	**$ 23,917,842**

Using the estimates provided for TID #3, the value of all existing Tax Increment Districts combined is less than 1 % of the total 2022 Taxable Valuation.

KIND, NUMBER, LOCATION, AND DETAILED COSTS OF PROPOSED PUBLIC WORKS AND IMPROVEMENTS – SDCL § 11-9-13(1)

In order to implement the provisions of SDCL Chapter 11-9, the following are Project Costs and expenditures made or estimated to be made and the monetary obligations incurred or estimated to be incurred. The Project Costs include capital costs, financing costs, real property assembly costs, professional fee costs, imputed administration costs, relocation costs, organizational costs, discretionary costs and grants, plus any costs incidental thereto.

All Project Costs are found to be necessary and convenient to the creation of the Tax Incremental District and its implementation. The project constitutes economic development which is a proper public purpose of the City. The City exercises the powers expressly stated in and reasonably inferred by SDCL §11-9-15 and Chapter 9-54. The City shall enter into all contracts in accordance with South Dakota Law.

Costs of Public Works and Improvements

In accordance with SDCL § 11-9-14 the following is the kind, number, location and dollar amount of estimated Project Costs, costs of public works and improvements.

The following are estimated costs of the Project:

Kind of Project	Location[1]	Amount	Reference[2]
Capital Costs (Street, Water & Sewer) (cleaning & grading of land & associated costs)[2]	District		11-9-15(1)
Financing Costs	District		11-9-15(2)
Real Property Assembly	District		11-9-15(3)
Professional Fees	District		11-9-15(4)
Administrative Costs	District		11-9-15(5)
Relocation Costs	District		11-9-15(6)
Organizational Costs	District		11-9-15(7)
Discretionary Costs and Grants	District	**$4,000,000**	11-9-15(8)
Eligible Project Costs		**$4,000,000**	

The above are estimates of the costs involved in the project; the final total may be greater or smaller. An itemized listing of the estimated costs is set forth on Schedule 1. Because the cost estimates are only projected expenditures, the total authorized TID costs is expected to be $4,000,000. This amount is the controlling value with respect to authorized TID Project Costs rather than the particular line-item amounts contained in the above Chart and Schedule 1.

The line-item categories proposed are for guidance only, and actual costs will be determined upon completion of the improvements. The above total represents eligible Project Costs. Only such amounts as are feasible will be allowed by the City or by monetary obligation.

[1]District shall mean the Tax Increment District.

[2]SDCL §11-9-15 (1) Capital costs, including the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; the clearing and grading of land; and the amount of interest payable on tax incremental bonds or notes issued pursuant to this chapter until such time as positive tax increments to be received from the district, as estimated by the Project Plan, are sufficient to pay the principal of and interest on the tax incremental bonds or notes when due;
(2) Financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for Project Costs, any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity and a reserve for the payment of principal of and interest on such obligations in an amount determined by the governing body to be reasonably required for the marketability of such obligations;
(3) Real property assembly costs, including the actual cost of the acquisition by a municipality of real or personal property within a tax incremental district less any proceeds to be received by the municipality from the sale, lease, or other disposition of such property pursuant to a Project Plan;
(4) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;
(5) Imputed administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a Project Plan;
(6) Relocation costs;
(7) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public of the creation of tax incremental districts and the implementation of project plans; and
(8) Payments and grants made, at the discretion of the governing body, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

Entity	Eligible Amount	Requested Amount	Reference[2]
Developer	$3,627,327	$3,000,000	11-9-15(8)
City	$1,000,000	$1,000,000	11-9-15(8)

Conditions of the Developer Agreement relating to Constitutional Debt

It is specifically a condition of the proposed Developer's Agreement that the City's obligation to pay is limited to the proceeds of the positive tax increment from the TID receipted into the TIF Fund. The obligation of the City to pay pursuant to the proposed Agreement does not constitute a general indebtedness of the City or a charge against the City's general taxing power. The provisions of SDCL 11-9-36 are specifically incorporated within the Agreement by reference. It is also is to be specifically agreed that the City has made no representation that the proceeds from such Fund shall be sufficient to retire any indebtedness incurred by Developer. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocation of the positive tax increment payments and the fund created by the TID.

Additionally, the City's obligations to make the payments set forth in the proposed Agreement shall be lawfully made from funds to be budgeted and appropriated on an ANNUAL BASIS for that purpose during the City's then current fiscal year, thus not counting towards Constitutional Debt. If at any time during the term of this Agreement, the governing body of the City shall fail or refuse to approve or authorize the funds due hereunder, then the Agreement shall terminate upon the end of the fiscal year for which funds were approved or authorized, without penalty to the City. The City's obligation hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City. Notwithstanding anything to the contrary contained in the proposed Agreement, the City hereby acknowledges and agrees that the obligations of the City under this Agreement are a material inducement for Developer to incur various development and construct improvements upon the TID property and the failure to pay tax increment to Developer will be financially detrimental to future improvements on said property.

It is further understood that the amount of $4,000,000 will be the maximum amount the City will ever pass on acting as a conduit for TIF #3. This amount will include any and all interest associated with the debt and the controlling value of the TIF will never pay more than $4,000,000.

The payment of tax increment funds under this Agreement is a grant under Chapter 11-9 of the South Dakota Codified Laws (the "Grant"). The Grant is a personal property right vested with the Developer on the effective date of this Agreement. The City will grant this amount to the Developer and thus not have to account for any assets on the City's financial statement. The Developer will be responsible for obtaining their financing and the City will not be liable for any Developer debt.

Upon completion of the construction of the infrastructure improvements, the Developer shall certify to the City's Finance Officer the costs of construction, including capital costs, Professional Fees, and contingency costs. The Developer shall provide contractor/supplier invoices or other supporting documentation upon request of the Finance Officer. Upon certification and verification of costs, the City shall pay all available tax increment fund revenues not to exceed $4,000,000, of which 75% will be paid to the Developer and 25% to the City.

Developer agrees to supervise the construction of the Project, as shown in Exhibit B, and cause the construction to be performed substantially in accordance with the Project Plan and the plans and specifications approved by the appropriate department of City. Developer also agrees to provide periodic reports of such construction to City upon reasonable request.

Developer and City agree that all positive tax increment revenues will be split on a 75% / 25% basis, where 75% of TIF Revenues is payable to the Developer, and 25% is payable to the City. Developer will use their allocated TIF revenue (75%) to reimburse the project costs associated with the development. The City will use their allocated TIF revenue (25%) as an administrative fee, that will be up to the discretion of the City of how these funds are expended.

Expenditures Exceeding Estimated Cost

Any expenditures, which in sum would exceed the total amount of the TID amount of $4,000,000, will require an amendment of this Plan. All amendments would be undertaken pursuant to SDCL §11-9-23.

When the expenditures within the Plan are increased in excess of more than 35 percent of the total above, the Department of Revenue will be required to reset the base, in accordance with SDCL §11-9-23.

If the Project Costs are not provided for in the original plan, the governing body would be required to amend the plan which requires the South Dakota Department of Revenue to re-determine the tax increment base when additional Project Costs are added to a plan. SDCL §11-9-23.

Detailed List of Estimated Project Costs

Attached as Schedule 1 is a detailed list of estimated Project Costs for the project as per SDCL § 11-9-13(3). No expenditure for Project Costs is provided for more than five years after the District is created.

FEASIBILITY STUDY, ECONOMIC DEVELOPMENT STUDY, AND FISCAL IMPACT STATEMENT

Feasibility Study

An economic feasibility study per SDCL § 11-9-13(2) is attached as Schedule 2.

Economic Development Study

Attached is Schedule 3 a Fiscal Impact Statement showing the impact of the Tax Increment District, until and after the bonds are repaid, upon all entities levying property taxes in the district. Required as per SDCL § 11-9-13(4).

Fiscal Impact Statement

Attached is Schedule 4 a Fiscal Impact Statement showing the impact of the Tax Increment District, until and after the bonds are repaid, upon all entities levying property taxes in the district. Required as per SDCL § 11-9-13(4).

METHOD OF FINANCING, TIMING OF COSTS AND MONETARY OBLIGATIONS

The payment of Project Costs is anticipated to be made by the City to Developer from the special fund of the Tax Incremental District. SDCL § 11-9-13(5). Pursuant to the Developer's Agreement, the City will pay to the Developer all available tax increment funds it receives from the District.

Maximum Amount of Tax Increment Revenue

The maximum amount of tax increment revenue bonds or monetary obligations to be paid through Tax Increment District #3 shall be the amount sufficient to reimburse the City for the payments made for Project Costs and pay all tax increment bonds or monetary obligations in an amount not to exceed $4,000,000 principal and interest or such lesser amount as may be feasible with the estimated revenue generated by the Tax Increment District. The final terms and conditions will be set forth in the Developer's Agreement.

Duration of Tax Increment Plan

The duration of the Plan will extend to the number of years it will take for the reimbursement of the City, the extinguishment of bonds and the monetary obligation except that the Plan duration **shall not exceed 20 calendar years** of revenue from the year of creation of the District.

ESTIMATED IMPACT OF TAX INCREMENT FINANCING ON REVENUES OF TAXING JURISDICTIONS

The site will generate taxes to the local jurisdictions at or above the assessed value of the base. All taxing districts shall receive the taxes from that base which will be the value set for the 2021 assessment year for taxes payable in 2022. The tax increment will be available to the taxing jurisdictions after dissolution, which is at or before twenty years after the creation of the District. Schedule 5 details the tax capture implications to each of the local taxing jurisdictions. After the repayment of all bonds and monetary obligations, taxing entities will receive their proportionate share of tax dollars for the base value and the tax incremental values.

GENERAL FUND

Mechanisms are built within State Codified Law to ensure that school districts are held harmless by TIF districts for their General Fund. For these purposes, law (SDCL 13-13-10.2) defines three classifications of TIFs:

- Economic Development - Any area where there is or will be one or more businesses engaged in any activity defined as commercial or industrial by the governing body that has zoning authority over the land contained within the tax incremental district
- Industrial – Any factory or any business engaged primarily in the manufacturing or assembly of goods, the processing of raw materials, and the wholesale distribution of products for resale
- Affordable Housing – Includes an area where: 1. The original selling price of any house in the district will be at or below the first-time homebuyer purchase price limit being used by the South Dakota Housing Development Authority as of the date the house is sold; OR 2. The monthly rental rate of all multifamily housing units in the district will be at or below the calculated rent for the state's eighty percent area median income as of the date the district is created, for a minimum of five years following the date of first occupancy.
- Local – Any tax incremental districts that do not fall under Economic Development or Industrial

Public school districts are generally funded through the State Aid to Education formula. The two primary channels of the formula are State Aid and Local Effort. Multiple agencies of the State of South Dakota calculate the amount of General Fund monies to be distributed to school districts each year through the State portion. Local effort is considered the amount of revenue that is generated by local property taxes at maximum levies.

If a TIF is classified as Economic Development, Industrial, or Affordable Housing, the school funding that would be generated by the increment valuation is considered lost local effort and is paid through the State Aid side of the formula. If a TIF is classified as Local, the affected school district funding must be recouped through local effort in the form of an additional levy added to the General and Special Education Funds. In either scenario, the school district receives the financial need associated with the increment valuation.

City of Madison TIF #3 has already received the preliminary classification from the Department of Revenue. The TIF is considered Economic Development; therefore, any lost local effort of the General Fund will be covered through the State Aid to Education Formula.

CAPITAL OUTLAY FUND

The impact of a TIF to the Capital Outlay Fund is minimal. Starting on July 1, 2020, a school district is limited to the amount of capital outlay dollars they can receive by either:

A. the previous year's maximum allowable can be increased by a growth factor plus 3%

Or

B. a per student amount.

The primary impact would be to the first scenario; a TIF would delay annual growth until the TIF is completed. However, once the TIF is dissolved, all increment value would be considered new growth for the school district.

If a school district falls under a per student limitation, they will see no impact to their funding due to the TIF.

SPECIAL EDUCATION FUND

The Special Ed Fund has the potential to see the greatest negative impact from the creation of a TIF district.

If the school district requests their special education monies in the form of a levy, then the exclusion of the TIF increment in the tax base would mean the school district is not receiving as much as it could.

If the school district submits their request in a dollar amount, then the fund would see no impact from a TIF district.

BOND REDEMPTION FUND

The school district is always able to ask for the needed money for the principal and interest of their bond repayment. The only impact a TIF would have on this fund is by holding back the increment value, lowering tax base for the spreading of the tax burden and creating a slightly higher levy for the local taxpayers.

MAPS

The Conditions map, SDCL § 11-9-16(1), is included as Attachment 2.

The Improvements map, SDCL § 11-9-16(2), is included as Attachment 3.

The Zoning Change Map, SDCL § 11-9-16(3), is included as Attachment 4.

CHANGES TO CITY COMPREHENSIVE/MASTER PLAN MAP, BUILDING CODES & CITY ORDINANCES PER SDCL §11-9-16 (4)

No changes to City ordinances nor the City Master Plan are required.

LIST OF ESTIMATED NON-ELIGIBLE PROJECT COSTS

The following is a list of the non-Project Costs per SDCL § 11-9-16(5). All costs are listed as taxable value; actual non-project costs will exceed the following amounts.

Item	Amount
Construction of Assisted Living	$10,000,000
Construction of Multi-Unit Facility	$6,000,000
TOTAL	**$16,000,000**

STATEMENT OF DISPLACEMENT AND RELOCATION PLAN

No residents or families will be displaced by the Project. SDCL § 11-9-16(6)

PERFORMANCE BOND, SURETY BOND OR OTHER GUARANTY

As security for its fulfillment of the agreement with the governing body, a purchaser or lessee of redevelopment property may furnish a performance bond, with such surety and in such form and amount as the governing body may approve or make such other guaranty as the governing body may deem necessary in the public interest. This additional security may be provided for in a Developer's Agreement.

LIST OF SCHEDULES

LIST OF ATTACHMENTS

Attachment 1 - Descriptions of Real Property

Attachment 2 - Conditions map, SDCL § 11-9-16(1)

Attachment 3 - Improvements map, SDCL § 11-9-16(2)

Attachment 4 - Zoning Change Map SDCL § 11-9-16(3)

SCHEDULE 1

DETAIL OF PROJECT COSTS

The following are estimate TIF eligible costs for the project as provided by the Project Engineers.

Bid Item	Item Description	Quantity	Unit	Unit Price	Total
1	Mobilization	1	LS	$272,000.00	$272,000.00
2	Clearing & Grubbing	1	LS	$5,000.00	$5,000.00
3	Stockpiling/Placing Topsoil	25,000	CY	$12.00	$300,000.00
4	Unclassified Excavation	75,000	CY	$5.00	$375,000.00
5	Remove & Replace Asphalt	55	SY	$150.00	$8,250.00
6	Remove & Replace Sidewalk	12	SY	$100.00	$1,200.00
7	Remove & Reset Culvert & Riprap	2	EA	$5,500.00	$11,000.00
8	Storm Sewer/Detention Pond Structure	2	EA	$20,000.00	$40,000.00
9	Culvert	100	LF	$80.00	$8,000.00
10	Flared End Section	4	EA	$1,000.00	$4,000.00
11	Type B Inlet	4	EA	$3,500.00	$14,000.00
12	RCP Storm Pipe	150	LF	$80.00	$12,000.00
13	Underground Detention Piping	700	LF	$150.00	$105,000.00
14	Underground Detention Manifold and Outlet Structure	1	LS	$30,000.00	$30,000.00
15	Underground Roof Drain Collection System Pipe	1,400	LF	$100.00	$140,000.00
16	Underground Roof Drain Collection System Manhole	12	EA	$3,000.00	$36,000.00
17	Underground Roof Drain Collection System Downspout	12	EA	$1,500.00	$18,000.00
18	8" PVC Sewer Main	2,100	LF	$75.00	$157,500.00
19	4" PVC Sewer Service	1,325	LF	$50.00	$66,250.00
20	48" Sewer Manhole	8	EA	$5,500.00	$44,000.00
21	4" Cleanout	25	EA	$500.00	$12,500.00
22	Connect to Existing Manhole	1	EA	$1,500.00	$1,500.00
23	4" PVC Water Service	20	LF	$65.00	$1,300.00
24	6" PVC Water Main	175	LF	$85.00	$14,875.00
25	8" PVC Water Main	800	LF	$110.00	$88,000.00
26	1" Poly Water Service Line	1,350	LF	$50.00	$67,500.00
27	1" Tapping Saddle	24	EA	$625.00	$15,000.00
28	8" MJ Plug	1	EA	$750.00	$750.00
29	6"x6"x4" Tee	1	EA	$800.00	$800.00
30	8"x8"x6" Tee	6	EA	$1,000.00	$6,000.00
31	8"x8"x8" Tee	1	EA	$1,500.00	$1,500.00
32	4" Gate Valve	1	EA	$1,200.00	$1,200.00
33	6" Gate Valve	2	EA	$1,600.00	$3,200.00
34	8" Gate Valve	3	EA	$2,000.00	$6,000.00
35	1" Curb Stop	24	EA	$800.00	$19,200.00
36	Fire Hydrant W/Aux Valve	5	EA	$7,500.00	$37,500.00
37	Connect to Existing Water Main	3	EA	$2,500.00	$7,500.00
38	5" Asphalt Pavement	2,175	TON	$150.00	$326,250.00
39	6" Base Course	3,900	TON	$45.00	$175,500.00
40	Curb & Gutter	2,750	LF	$35.00	$96,250.00
41	Sidewalk	12,000	SF	$10.00	$120,000.00
42	Sidewalk Header Curb	3,425	SF	$20.00	$68,500.00
43	6" Driveway	105	SY	$100.00	$10,500.00
44	Retaining Wall	1,450	SF	$200.00	$290,000.00
45	Pavement Marking	1	LS	$5,000.00	$5,000.00
46	Permanent Signing	1	LS	$5,000.00	$5,000.00
47	Erosion Control/Seeding	1	LS	$75,000.00	$75,000.00
48	Traffic Control	1	LS	$15,000.00	$15,000.00
49	Power, Gas, Tele Trench	1,750	LF	$14.00	$24,500.00
50	Lighting, Conduit	1	LS	$100,000.00	$100,000.00
51	Construction Staking	1	LS	$50,000.00	$50,000.00

Total Construction Cost	**$3,293,025.00**
10% Contingency	$329,302.50
Total Cost	**$3,622,327.50**

Estimates TID Eligible of Project Costs Requested

The City of Madison has determined that this will be an economic development Tax Increment District, thus the eligible cost will be in the form of an infrastructure grant that will not exceed $4,000,000. This is a permitted use under SDCL 11-9-15.

11-9-15. Specific items included in project costs. Project costs include:

(1) Capital costs, including the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, permanent fixtures; the acquisition of equipment; the clearing & grading of land; & the amount of interest payable on tax incremental bonds issued pursuant to this chapter until such time as positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of & interest on the tax incremental bonds when due;

(2) Financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for project costs, any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity and a reserve for the payment of principal of and interest on such obligations in an amount determined by the governing body to be reasonably required for the marketability of such obligations;

(3) Real property assembly costs, including the actual cost of the acquisition by a municipality of real or personal property within a tax incremental district less any proceeds to be received by the municipality from the sale, lease, or other disposition of such property pursuant to a project plan;

(4) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(5) Imputed administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(6) Relocation costs;

(7) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public of the creation of tax incremental districts and the implementation of project plans; and

(8) Payments and grants made, at the discretion of the governing body, which are found to be necessary or convenient to the creation of tax incremental districts, the implementation of project plans, or to stimulate and develop the general economic welfare and prosperity of the state.

SCHEDULE 2
ECONOMIC FEASIBILITY STUDY & TAXABLE VALUE

The City has been asked to create a Tax Increment District to help offset the expansion associated with this project. This feasibility study provides that the Project Costs can be financed through tax increment financing under South Dakota Tax Incremental District Law (South Dakota Codified Laws Chapter 11-9). Tax increment financing is an indispensable self-financing tool used throughout the United States to help local governments successfully develop and redevelop areas and encourage economic development.

In tax increment financing, the current real property tax assessed value of all properties in a designated project area ("tax increment financing district") is established as the "base value." As development in the tax increment financing district increases the assessed values of the redeveloped properties, a portion of the additional tax revenue generated by the increase in assessed value over the base value is set aside and committed by the City to the reimbursement of approved project costs.

Tax increment financing is permitted only in connection with a "Project Plan" duly adopted by the City. The property is currently estimated to have a taxable value of $28,200. The improvements to be made to the property are estimated to add to the assessed valuation. The estimated increment resulting from the improvements would be approximately $15,000,000 in new value once fully developed. Since only positive tax increment will be applied, the proposed project is feasible.

All of the project costs are found to be necessary and convenient to the creation of the Tax Incremental District and the implementation of the project.

For purposes of this Project Plan, the Developer is projecting that the infrastructure and site improvements will be built through up to 2 phases and fully developed by calendar year 2023.

The City's role is to simply act as a conduit for the revenue and pass on all positive increment to the Developer or to reimburse the City for their expenses, of which, will never exceed $4,000,000 in total payments, or 20 years, whichever comes first.

It is assumed that all obligations incurred would be adequately secured as to allow the payment of principal and interest when due, whether by means of a taxable bond or loan. The actual repayment schedule may change, but all principal and interest shall be paid within the life of the TID. Utilizing the information regarding expected increment valuation and tax generation, it is possible to estimate an expected revenue stream that can be utilized to retire debt that will be created as a result of implementing the Project Plan.

City of Madison TID #3 is proven feasible based upon the projections made by the Developer, projecting a total in excess of $4,000,000 in tax revenue during the life of the 20-year TIF.

The calculations of the estimated tax increment valuation and tax generated for the TID can be found in the following tables. For purposes of this Project Plan, it is anticipated no increment generated by City TID #3 will be available until the earliest of calendar year 2021 and thereafter.

TID Tax Revenue Estimates Available for City of Madison

This project will have properties that are classified as Non-Ag Other. The following projections show that the TIF #3 is projected to be financially feasible

City of Madison
Tax Increment District #4
Revenue Assumptions

Assumed Base Value $ 28,200

Construction Year	Valuation Year	Revenue Year	Valuation Increment	Total School "Other"	Madison City	Lake County	Water District	Total Mill Rate*	Total Revenue Increment	Total Increment for Debt Service
2022	2023	2024	4,000,000	11.051	6.241	2.547	0.023	19.862	$ 78,887.89	$ 78,887.89
2023	2024	2025	5,000,000	11.051	6.241	2.547	0.023	19.862	$ 99,310.00	$ 178,197.89
2024	2025	2026	4,000,000	11.051	6.241	2.547	0.023	19.862	$ 79,448.00	$ 257,645.89
2025	2026	2027	2,000,000	11.051	6.241	2.547	0.023	19.862	$ 39,724.00	$ 297,369.89
2026	2027	2028		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2027	2028	2029		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2028	2029	2030		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2029	2030	2031		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2030	2031	2032		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2031	2032	2033		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2032	2033	2034		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2033	2034	2035		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2034	2035	2036		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2035	2036	2037		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2036	2037	2038		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2037	2038	2039		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2038	2039	2040		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2039	2040	2041		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2040	2041	2042		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
2041	2042	2043		11.051	6.241	2.547	0.023	19.862		$ 297,369.89
										$ 5,570,019.83

** Assumes Mill Levies remain constant for the duration of the TIF*

Note: The Increment Valuations above are for projection purposes only and do not reflect what the actual number(s) may be. These projection numbers have not been certified or assessed by the Lake County Director of Equalization.

SCHEDULE 3
ECONOMIC DEVELOPMENT STUDY

The City of Madison has been approached concerning the creation of a tax increment district (TID) located within the city limits. Per South Dakota Codified Law 11-9-8, the governing body must make a finding that not less than 50%, by area, of the real property within the district will stimulate and develop the general economic welfare and prosperity of the State through the promotion and advancement of industrial, commercial, manufacturing, agricultural and natural resources, and the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district.

Study Area Boundary

The Project boundaries are described and depicted on the maps in Attachments 1 and 2 of this Plan.

Establishing Economic Development

South Dakota law describes economic development as activity that stimulates and develops the general economic welfare and prosperity of the state through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources. The definition of Economic Development for State Aid to Education Formula purpose is any area where there is or will be one or more businesses engaged in any activity defined as commercial or industrial. The proposed City of Madison TID #3 meets both of these criteria. The area within the boundaries of the TIF is to continue to be developed into a senior living community development.

The project will lie within the City of Madison. The Project is estimated to have an annual economic impact of $1,400,000 based on the creation of 20+ jobs.

The project is expected to be completed by 2023 calendar year.

Finding That the Improvements to the Area Are Likely to Enhance Significantly the Value of Substantially All of The Other Real Property in The District

It is definitively found that once the improvements set forth within the Project Plan are initiated, the improvements will enhance significantly the value of substantially all of the other real property in the district. The City of Madison TID #3 will have a tremendous economic impact on the region's infrastructure advancement and the labor force.

Conditions Within the Study Area; Land Use and Planning Land Use, Planning and Comprehensive Plan

The City of Madison Comprehensive Plan is consistent with the proposed use of the District.

Findings within the Project Area Analysis

It is found that not less than 50%, by area, of the real property within the District will stimulate and develop the general economic welfare and prosperity of the State of South Dakota through the promotion and advancement of industrial, commercial, manufacturing, agricultural, and natural resources. It is also found that the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the District in accordance with SDCL 11-9-8.

The Project area currently consists of an undeveloped area between the Madison Regional Hospital and Eagan Ave in the City of Madison. The project will create jobs and provide housing for a growing market and population sector along with creating job expansion and opportunities to the area.

The investment of about $16,000,000 in the Project area will stimulate and develop the general economic welfare and prosperity of the State through the promotion of employment and advancement of commerce during the construction period. The Project will enhance the community of Madison City by creating additional jobs and will have a substantial annual economic impact to the region and state.

SCHEDULE 4

FISCAL IMPACT STATEMENT FOR CITY OF MADISON TID #3

A fiscal impact statement shows the impact of the TID, both until and after the bonds or obligations are repaid, upon all entities levying taxes upon property in the District. The following fiscal impact statement is intended to provide only a brief analysis of the estimated impact of the Tax Increment District to the public pursuant to SDCL § 11-9-13(4). It is not intended to challenge a more detailed, complete financial analysis.

Definitions

“Assumptions” means factors or definitions used in the fiscal analysis. Assumptions may include facts and figures identified by the District and educated guesses that are sometimes necessary when not all of the information is available. Assumptions are often used to extrapolate an estimate. Assumptions may include an estimate of tax levies of each taxing entity, the school aid formula contribution, the value of the real property, etc.

***"Base Revenues*”** means the taxes collected on the base value.

“Fiscal Impact” means the increase or decrease in revenues and generally refers to an impact to revenues caused by the district.

“Revenue” means ad valorem taxes.

“Tax Increment District” means City of Madison Tax Increment District Number 4.

“Taxing Districts” means all political subdivisions of the state which have ad valorem taxing power over property within the boundaries of the Tax Increment District.

“Tax Increment Revenues" means all revenues above the Base Revenues.

Assumptions

1. The property will have improvements, which at completion, are estimated at taxable purposes up to $16,000,000 .
2. The average tax levy of all taxing districts will be $19.862 per thousand dollars of taxable valuation.
3. Tax increment will start to be collected in 2024 and end prior to 2043.
4. The discretionary formula will be waived by Developer.

SCHEDULE 5
ESTIMATED CAPTURED TAXABLE VALUES

For purposes of this Project Plan, City assumes that **Developer will elect not to use any real property tax discretionary formula** currently utilized in Lake County or City of Madison, South Dakota, pertaining to payment of real property taxes (i.e., 20% Year 1; 40% Year 2; 60% Year 3; 80% Year 4; and 100% Year 5.

* Actual valuation shall depend upon the value determined by the Lake County Director of Equalization when assessed, with the application of dollars-per-thousand from local taxes. All tax increment revenues shall be from Generally Applicable Taxes attributable to the improvements to be constructed in the TID. The potential for total increment collections is estimated to be at the maximum range of $4,000,000 covering a span of captured tax years not to exceed 20. Collection is anticipated to begin in 2024, and the schedule carries out the tax captured 20 years from the date of Plan adoption.

The following dollars-per-thousand rates are the current taxing rates of the local taxing jurisdictions for Non-AG Other property types:

2022 Property Tax Rate

2021 Payable in 2022	$ per $1,000 assessed
City of Madison	$ 6.241
Lake County	$ 2.547
Water District	$ 0.023
School District “Other”	$ 11.051
Total Tax Levy	**$ 19.862**

Utilizing the information regarding expected increment valuation and tax generation, it is possible to generate an expected revenue stream that can be utilized to retire debt that will be created as a result of implementing the Project Plan.

ATTACHMENT 1

Descriptions of real property:

LOT 5 OF SCHULTZ'S ADDITION IN THE N1/2 OF SECTION 18, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., CITY OF MADISON, LAKE COUNTY, SOUTH

ATTACHMENT 2

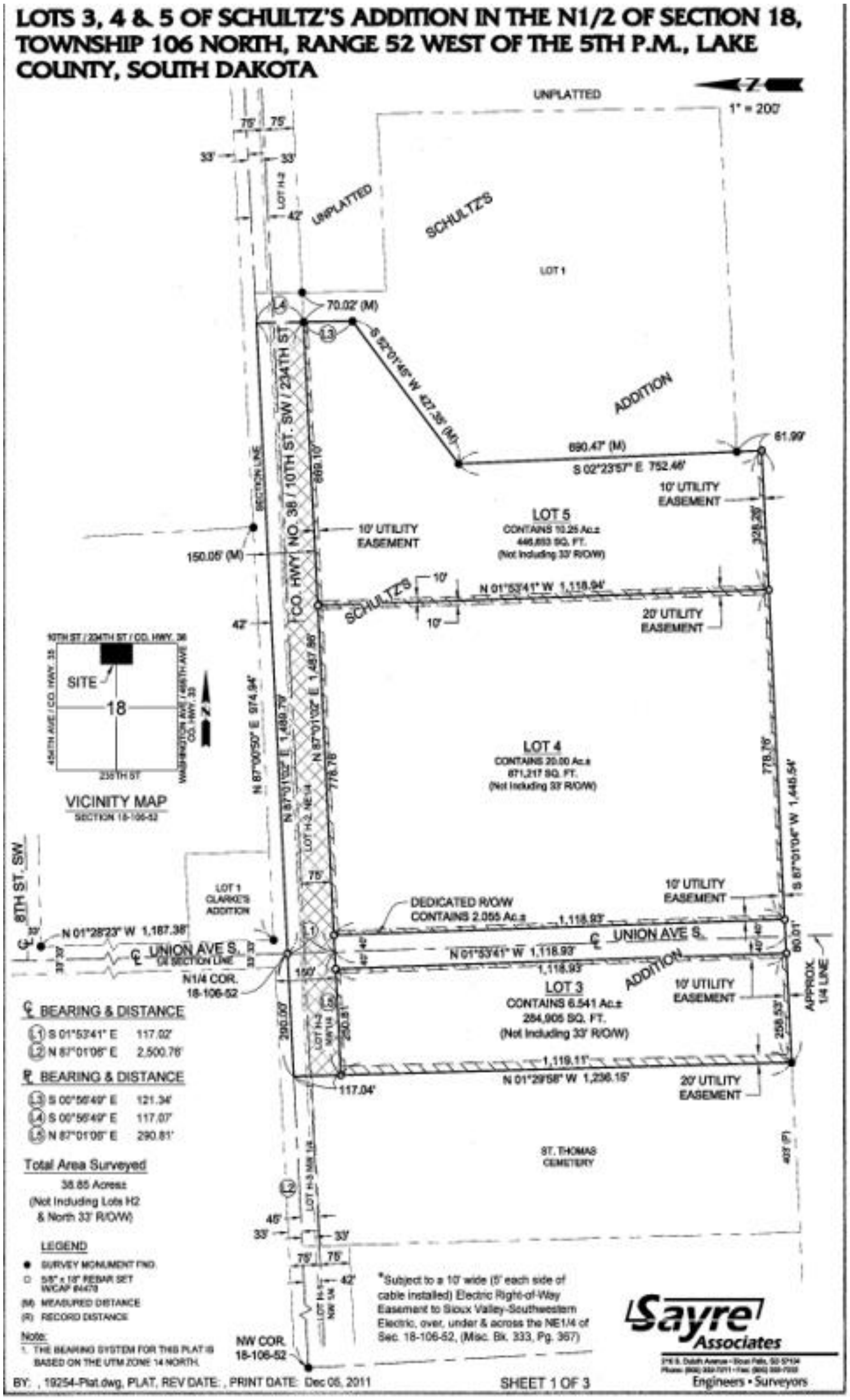
Conditions picture for City of Madison Tax Incremental District #3, SDCL § 11-9-16(1)

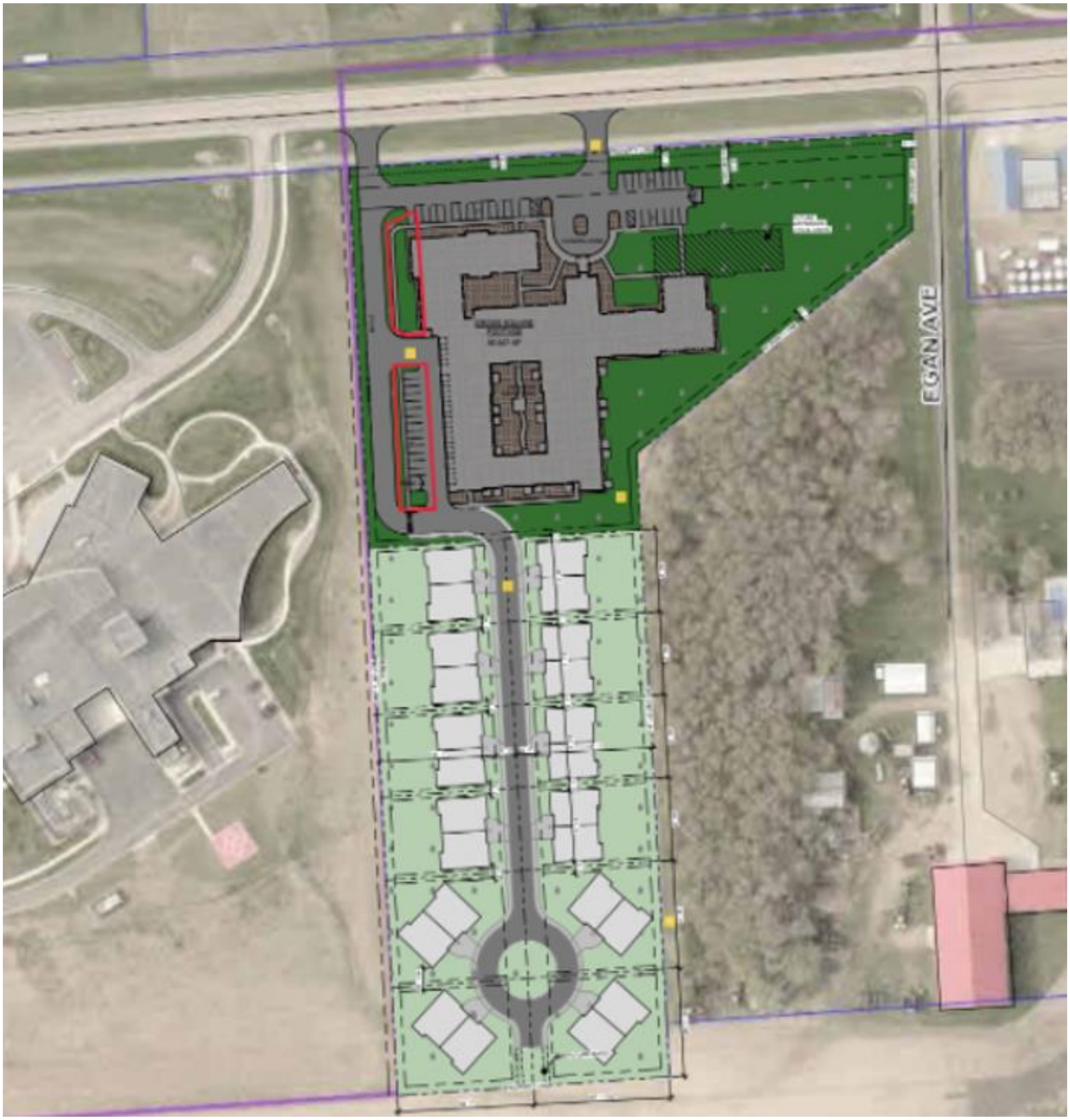
The following is a picture showing the current conditions of the proposed location of TIF #3

ATTACHMENT 3

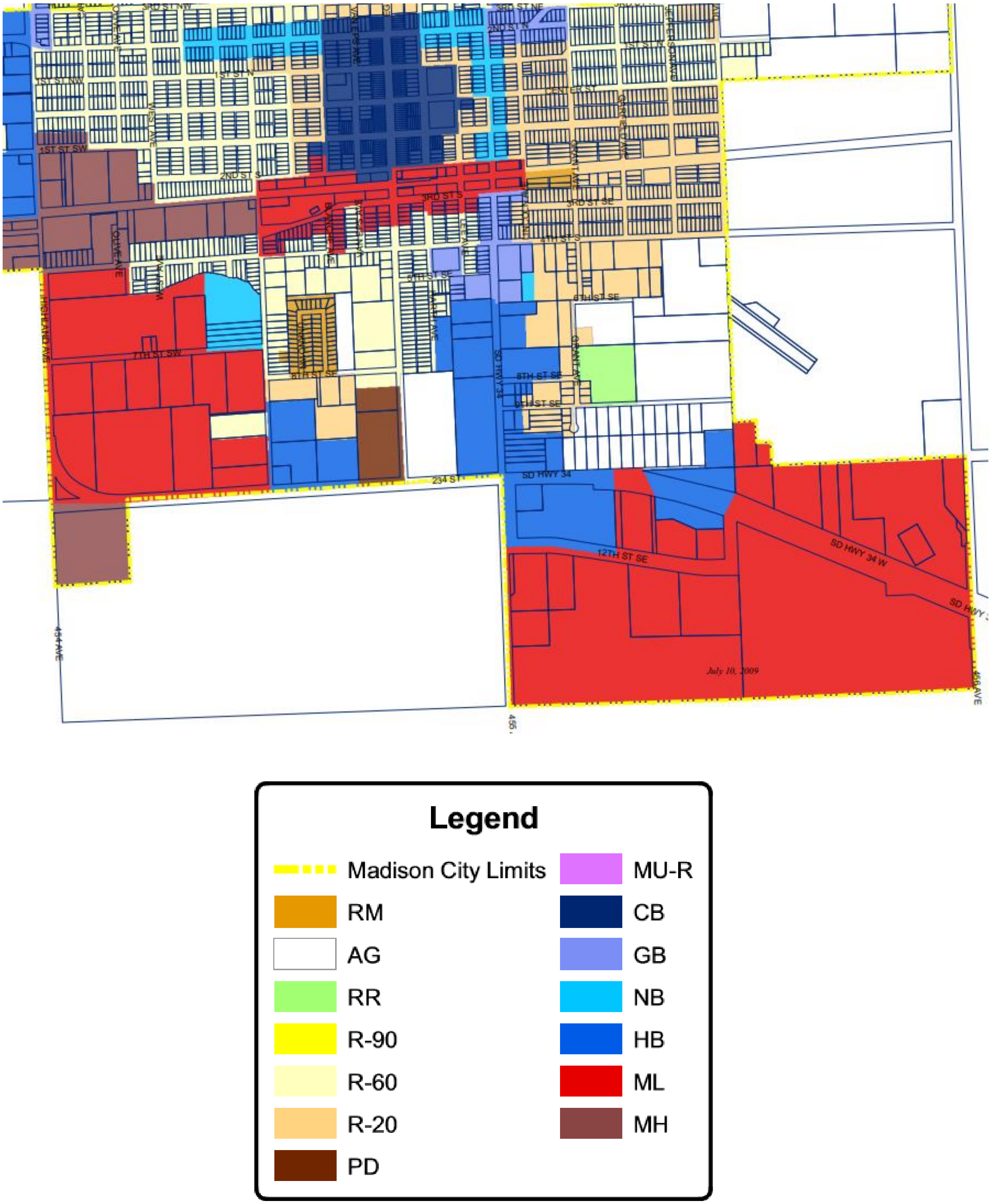
Improvements map for City of Madison Tax Incremental District #3, SDCL § 11-9-16(2).

The following is a plat map of the Tax Increment District:




EGAN AVE

Zoning Change Map for City of Madison Tax Incremental District #3, SDCL § 11-9-16(2).



ATTACHMENT 5

SOUTH DAKOTA DEPARTMENT OF REVENUE
445 East Capitol Avenue • Pierre, SD 57501
(605) 773-3311 • dor.sd.gov

May 5, 2022

City Finance Office
116 W. Center St
Madison SD 57042

RE: Preliminary Classification of City of Madison # 3

Dear Jameson Berreth:

The Department of Revenue hereby acknowledges receipt of your request for Preliminary Classification of Tax Increment Financing District submitted on 05/05/2022.

Upon review of the provided information, the Department has determined the preliminary classification for the TIF District "City of Madison # 3" to be <u>Economic Development</u> for the purposes of the State Aid to Education formula.

If you have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

Wendy Semmler, Director
Property Tax Division

http://dor.sd.gov

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is entered into as of this June 6th, 2022, (this "Agreement") by and between the **CITY OF MADISON,** a South Dakota Municipality ("City"), and **PP6 MADISON, LLC,** (Developer");

WITNESSETH:

WHEREAS, City has an interest in promoting economic development and affordable housing and is authorized pursuant to SDCL Chapter 11-9 (the "Act") to create tax increment districts for such purposes; and

WHEREAS, in order to accelerate the development of certain property that would not otherwise occur solely through private investment in the reasonably foreseeable future, the City of Madison City Council on June 6th, 2022, adopted Resolution No. ____, a copy of which is attached hereto as *Exhibit A*, City created Tax Increment District Number 3 (the "TID" or "District") encompassing the following described real property:

> LOT 5 OF SCHULTZ'S ADDITION IN THE N1/2 OF SECTION 18, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

WHEREAS, the Act authorizes the expenditure of funds derived within a tax increment district for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the City establishing the TID, for grants, costs of public works or public improvements in the TID, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the TID, which expenditures and monetary obligations constitute project costs, as defined in Section 11-9-14 of the Act; and

WHEREAS, on June 6th, 2022 the City Council adopted Resolution No. ____ to approve the Tax Increment District Four Plan, a copy of which is attached hereto as *Exhibit B* providing for development of the TID Property (the "Project Plan"), which included the payment of a grant in an amount not to exceed $4,000,000 toward certain costs of development as described in the Project Plan.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, apportionment and benefits contained in this Agreement, City and Developer hereby agree as follows:

Section 1. Definitions

Unless the context otherwise requires, the terms used in this Agreement will have the meanings set forth in this Section. If not defined in this Agreement, capitalized terms will have the meaning given to them in the Project Plan.

"Act" means SDCL Chapter 11-9, as may be amended from time to time.

"Base Revenues" means the taxes collected on the Base Value.

"Base Value" means the value of the TID Property at the time of the creation of the district as certified by the South Dakota Secretary of Revenue.

"Construction Schedule" means the timetable for constructing the improvements specified in Section 2.08.

"Developer" means PP6 Madison, LLC

"Grant" means an amount not to exceed $4,000,000 in total, payable through the use of Tax Increment Revenues.

"Project" means the construction of public improvement (water, sewer, street, drainage) for the affordable housing improvements.

"Project Costs" means the approximate cost of construction costs associated with the Project.

"Project Plan" means the Project Plan attached as *Exhibit B.*

"Public Improvements" means all improvements made by Developer as estimated and written into the Project Plan.

"Tax Increment Revenues" means all tax revenues of the TID Property in excess of the Base Revenues.

"TID" will have the meaning specified in the recitals.

"TID Property" will have the meaning set forth in the recitals.

Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified. Unless otherwise specified, the terms used in this Agreement found in the Act shall have the meaning set forth in the Act.

Section 2. Obligation and Representations

2.01 Remittance of Tax Increment Revenues; City Expenses.

(a) City agrees to pay to Developer through a grant, but solely from Tax Increment Revenues, a sum not to exceed $3,000,000, which equates to seventy-five percent (75%) of the TIF amount, in total and not to exceed over the life of the TIF. City will receive a sum not to exceed $1,000,000, which equates to twenty-five percent (25%) of the TIF amount, in total and not to exceed over the life of the TIF.

(b) City shall only pay funds as Tax Increment Revenues become available.

(c) If Developer fails to comply with the Act and such failure results in the City incurring any cost, the City shall be entitled to charge the cost to Developer as a processing charge that must be paid prior to any further remittance.

(d) No remittances will be made when Developer is in default of this Agreement or the Act and has received notice of the default pursuant to this Agreement or, in the case where the default arises out of breach of a federal, state or municipal law, where the Developer has been made aware of the breach of the law.

2.02 Grant. The parties acknowledge that Developer's right to receive the Tax Increment Revenues hereunder is a grant under the Act, and a personal property right vested with Developer on the date hereof. Developer acknowledges that City makes no guarantee that there will be sufficient Tax Increment Revenues generated to fully pay the grant and that Developer's right to such funds are further contingent on Developer complying with all applicable laws, the Act, City Ordinance and any obligations imposed on Developer by the City's __________________ Resolution, the Project Plan and this Agreement.

2.03 No Certificated Tax Increment Revenue Bonds. City will have no obligations to the Developer except as set forth in this Agreement and will not issue any certificated tax increment revenue bonds to evidence or provide any other financing assistance.

2.04 Developer's Representations. Developer represents to City as follows:

(a) Developer is a limited liability company organized in the State of South Dakota;

(b) Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement;

(c) Developer's performance under this Agreement will not violate any applicable judgment, order, law or regulation;

(d) Developer's performance under this Agreement will not result in the creation of any claim against City for money or performance, any lien, charge, encumbrance or security interest upon any asset of City;

(e) Developer will have sufficient capital to perform all of its obligations under this Agreement, and Developer owns the TID Property;

(f) Developer waives its right to participate in the City or County's Property Tax Reduction Program, if applicable, as described in the Project Plan and Section 3.01 (a); and,

(g) Developer recognizes and accepts South Dakota Codified Law 13-13-10.10:

13-13-10.10. Industrial, economic development, and affordable housing purposes defined for purposes of § 13-13-10.9. For the purposes of § 13-13-10.9, the terms, industrial, and, economic development, include only those areas where there is or will be one or more businesses engaged in any activity defined as commercial or industrial by the governing body that has zoning authority over the real property contained within the tax increment financing district.

2.05 Approvals. The City's obligations pursuant to this Agreement are specifically conditioned upon the resolution and ordinances implementing TIF #3 becoming effective.

2.06 Payment of Tax Increment Revenues. The City will make eligible payments due to Developer within a reasonable time, not to exceed 45 days from the County's receipt of real estate tax payments semi-annually or 30 days after the City receives the funds, whichever is later.

2.07 Continued Cooperation. City and Developer represent each to the other that they will make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

2.08 No General Obligation of the City. City obligations hereunder are limited obligations payable solely out of the Tax Increment Revenues and are not payable from any other revenues of City, nor a charge against its general taxing power. Developer shall bear all risks that such Tax Increment Revenues may be insufficient to pay the maximum amounts specified in Section 2.01.

2.09 Assignment of Payments. Upon written notice to the City, Developer may assign its rights to payments hereunder for the purposes of financing its obligations related to this Agreement, but Developer's right to such payments is subject to the other limitations of this Agreement. Any such assignment shall be made in accordance with an Assignment Agreement, the form of which is attached hereto as *Exhibit* C and is incorporated herein by this reference.

Section 3. The Project.

3.01 The Project. The Project will be comprised of real estate, and the design, construction, assembly, and installation of the improvements described in the Project Plan.

(a) Description of the Project. The Project consists of $4,000,000 of improvements to the property.

(b) Completion of the Project Improvements: Developer shall diligently work to complete the respective portions of the project by November 1, 2023. Should Developer fail to work diligently towards completion, City may give notice to the Developer of his failure and may withhold all remittances until Developer provides reasonably assurances or security ensuring completion of the Project.

The time periods set forth above in this Section 3.01(b) shall be extended by reason of delays caused by Force Majeure. As used herein, "Force Majeure" shall refer to delays caused by or occasioned by labor disputes, acts of God, moratoriums, war, riots, insurrections, civil commotion, a general inability to obtain labor or materials, fire, unusual delay in transportation, severe and adverse weather conditions preventing performance of work, unavoidable casualties, failures to act by any governmental entity or their respective agents or employees, governmental restrictions, regulations or controls including the inability to obtain the necessary governmental approvals and/or permits necessary to complete any portion of the Project.

3.02 Construction of the Public Infrastructure Improvements. The Developer will cause the Public Improvements to be constructed by the Developer through private contract. The City will not bid nor contract any improvement described in this Agreement. The Developer will make sure all improvements are to the City of Madison standards and specifications. Developer shall comply with all City Ordinances in completion of the Public Improvements. Nothing in this Agreement prevents City from enforcing any City Ordinance or requiring Developer comply with City's requirements for development of infrastructure that may become part of the City's infrastructure. The City's enforcement of any federal, state or municipal law will not be deemed a breach of any City obligations contained in this Agreement.

3.03 Financing of the Project and Improvements. Payment of all Project Costs will be made from Developer's own capital and from other sources obtained solely by Developer. Developer may use any or part of the TID Property owned by the Developer as collateral for such loans as required to pay Project Costs.

Section 4. Developer Covenants

4.01 Duties and Obligations of Developer. Developer hereby agrees to: (a) complete, or cause to be completed, all improvements described in the Project Plan and this Agreement, (b) provide, or cause to be provided, all materials, labor, and services for completing the Project, (c) obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the TID Property.

4.02 Insurance. Developer will maintain a policy of liability insurance, acceptable to City, with liability limits of at least One Million Dollars ($1,000,000) that names City as an additional insured. Such a policy must remain in effect until City of Madison accepts the improvements. City will provide no insurance for the Project.

4.03 Indemnification. Developer will without a determination of liability or payment being made FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, City (and the elected officials, employees, officers, directors, and representatives of City) from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Developer's negligence, willful misconduct or criminal conduct in Developer's activities under this Agreement, including any such acts or omissions of Developer, its Members, Managers, any agent, officer, director, representative, employee, consultant or subconsultants of Developer, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to City under South Dakota law and without waiving any defenses of the parties under South Dakota law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer will promptly advise City in writing of any claim or demand against City related to or arising out of Developer's activities under this Agreement and will see to the investigation and defense of such claim or demand at Developer's cost to the extent required in this paragraph. City will have the right, at its option and expense, to participate in such defense with attorneys of its choice, without relieving Developer of any of its obligations under this paragraph.

4.04 Liability. Developer will be solely responsible for compensation and taxes payable to any employee or contractor of Developer, and none of Developer's employees or contractors will be deemed to be employees or contractors of City. No elected official, director, officer, employee, representative or agent of City shall be personally responsible for any liability arising out of or resulting from this Agreement.

4.05 Taxes & Licenses. Developer will pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees that are now or may hereafter be levied upon the TID Property or upon Developer or upon the business conducted on the TID Property, or upon any of Developer's property used in connection therewith, including employment taxes; and Developer shall maintain in current status all federal State, and local licenses and permits required for the operation of the business conducted by Developer.

4.06 Examination of Records. Developer will allow City to conduct examinations and copy, during regular business hours and following notice to Developer by City, of the books and records related to this Agreement no matter where books and records are located.

Section 5. Term and Termination

5.01 Term. The term of this Agreement shall commence on the date the resolution or ordinance approving this Agreement becomes effective and end on the date which is the *earliest* to occur of the following, at which time City's obligations hereunder will be deemed fully discharged:

(i) the date on which the amount payable under Section 2.01 has been paid in full to Developer; or

(ii) the date this Agreement is terminated as provided in Section 5.02; or

(iii) the 20th anniversary of the year of the creation of the TID; or

(iv) the date complete repayment of any monetary obligation associated with this TIF whether through the sale of the property, prepayment through additional cash flows, or any other means pursuant to SDCL 11-9-25.

5.02 Default and Termination. If Developer fails to commence and complete construction substantially in accordance with the construction schedule detailed in Section 3.01(b) above or has committed a material breach of this Agreement, City may terminate this Agreement if Developer does not fully cure its failure within sixty (60) calendar days after receiving written notice from City requesting the failure be cured. If the Agreement is terminated as set forth in this Section, City's obligations under this Agreement will be deemed fully discharged.

Section 6. Miscellaneous

6.01 Non-Waiver. Provisions of this Agreement may be waived only in writing. No course of dealing on the part of City, or Developer nor any failure or delay by City or Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

6.02 Entire Agreement. This Agreement embodies the final and entire agreement between the parties hereto concerning the subject matter herein. The Exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between any such Exhibit and a provision of this Agreement, the provision of this Agreement will control.

6.03 Amendments. All amendments to this Agreement and the Project Plan may only be made in a writing executed by City and Developer, after obtaining all necessary approvals.

6.04 Severability. If any clause or provision of this Agreement is held invalid or unenforceable, such holding will not invalidate or render unenforceable any other provision hereof.

6.05 Venue and Governing Law. This Agreement shall be construed under and in accordance with the laws of the state of South Dakota. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Stanley County, South Dakota.

6.06 Notice. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

6.07 Under SDCL 11-9-25, the positive-tax increments of the district shall be allocated to the City of Madison for each year from the date of the creation of the TID until all monetary obligations under this Agreement are paid. However, in no event may the positive-tax increments be allocated after the calendar year 2042. In addition, payment of tax-increment-fund revenues to Developer shall not exceed $4,000,000 paid to the Developer (the "Grant Amount").

6.08 The Parties understand that the infrastructure cost figures are based upon good faith estimates, and the actual components within a particular phase and cost category may vary from the estimated values. Therefore, the Developer agrees that the total authorized project costs of contemplated under this Agreement is the controlling value with respect to the authorized TID expenditures available for reimbursement to Developer. It is further understood that the line item categories and estimated costs were prepared for guidance in developing the Project Plan, and actual costs will be determined upon completion of the infrastructure improvements; however, if the total of the actual infrastructure-improvement costs and financing costs exceed $4,000,000, the Parties acknowledge and agree that any costs exceeding this amount are guaranteed by the Developer.

6.09 Payments must be made solely from available tax-increment funds as specified in this Agreement. The City's obligations to make the payments set forth in the proposed Agreement shall be lawfully made from funds to be budgeted and appropriated on an ANNUAL BASIS for that purpose during the City's then current fiscal year, thus not counting towards Constitutional Debt. If at any time during the term of this Agreement, the governing body of the City shall fail or refuse to approve or authorize the funds due hereunder, then the Agreement shall terminate upon the end of the fiscal year for which funds were approved or authorized, without penalty to the City. The City's obligation hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City. Notwithstanding anything to the contrary contained in the proposed Agreement, the City hereby acknowledges and agrees that the obligations of the City under this Agreement are a material inducement for Developer to incur various development costs and construct improvements upon the TID property and the failure to pay tax increment to Developer will be financially detrimental to future improvements on said property.

6.10 Revenue Share of Positive TIF increments. Positive TIF increments will be allocated Seventy-Five Percent (75%) to the Developer and Twenty-Five Percent (25%) to the City.

6.11 Notices.

City
City of Madison
116 W Center Street
Madison, SD 57042

Developer
Kirk Simet
PP6 Madison, LLC
432 5th Street, Brookings, SD 57006

Any of the above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications may be sent.

6.12 Captions. Captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

{Signature Page Follows}

IN WITNESS THEREOF, the parties hereto have caused this Development Agreement to be duly executed as of the day and year first written above.

City of Madison

____

Roy Lindsay, Mayor

ATTEST:

____

Sonya Wilt

Finance Officer

Resident Attorney

____

PP6 Madison, LLC

____

By:

Its:

EXHIBIT A

Boundary Resolution

EXHIBIT B

Project Plan

EXHIBIT C

Assignment Agreement

DRAFT **AIA® Document B101™ – 2017**

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the «Twenty first -» day of «March » in the year «2022 »
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

«City of Madison -»« »
«116 West Center Street -»
«Madison, SD 57042 -»
« »

and the Architect:
(Name, legal status, address and other information)

«Randall Stanley Architects, Inc. »« »
«2307 W 57th St, Suite 101 -»
«Sioux Falls, SD 57108 -»
«RS 219-17 »

for the following Project:
(Name, location and detailed description)

«City Administration Building -»
«Madison, South Dakota -»
«30,000 total square foot, two story precast building housing the Police, Finance, HR, Engineering and Administrative Departments, along with the mayor's office and commission room. 8,000 of the 30,000 total square feet will be used as vehicle storage for city owned vehicles.- »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") NA

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«Program developed under a previous contract with owner and architect. »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

«30,000 sf new building located near S. Highland Ave & 4th St NW »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

«Unknown »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«CD Completion – August 18, 2022

Bids Received – September 15, 2022 »

.2 Construction commencement date:

«October 2022 »

.3 Substantial Completion date or dates:

«TBD »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

«Design/BID/Build- »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«None »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

None

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

«TBD »
« »
« »
« »
« »
« »

~~**§ 1.1.8** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:~~
~~*(List name, address, and other contact information.)*~~

~~« »~~

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«Geotek Engineering & Testing Services, Inc
909 East 50th St North

Sioux Falls, SD 57104 »« »
« »
« »
« »
« »

~~.2 Civil Engineer:~~

~~« »« »~~
~~« »~~
~~« »~~
~~« »~~
~~« »~~

~~.3 Other, if any:~~
~~*(List any other consultants and contractors retained by the Owner.)*~~

~~« »~~

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

«Justin Oleson, AIA »
«RSA »
«2307 West 57th St, Ste 101 »
«Sioux Falls, SD 57108 »
« »
« »

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:
.1 ~~Structural~~ Civil Engineer: TBD

«Norman Engineering and Surveying »« »
«3800 W 53rd St »
«Sioux Falls, SD 57106 »
« »
« »

.2 ~~Mechanical~~ Structural Engineer: TBD

«Rise Structural Associates »« »
«6909 S Lyncrest Place Suite 110 »
«Sioux Falls, SD 57108 »
« »
« »

.3 ~~Electrical~~ Mechanical Engineer: TBD

«Associated Consulting Engineering »« »
«340 S Phillips Ave »
«Sioux Falls, SD 57104 »
« »
« »

.4 Electrical Engineer: TBD
Associated Consulting Engineering
340 S Phillips Ave
Sioux Falls, SD 57104

.5 Fire Protection Engineer: TBD

~~§ 1.1.11.2 Consultants retained under Supplemental Services:~~

~~« »~~

§ 1.1.12 Other Initial Information on which the Agreement is based:

« »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than «one million » ($ «1,000,000.00 ») for each occurrence and «two million » ($ «2,000,000.00 ») in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «one million » ($ «1,000,000.00 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than «one million » ($ «1,000,000.00 ») each accident, «one million » ($ «1,000,000.00 ») each employee, and «one million » ($ «1,000,000.00 ») policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than «two million » ($ «2,000,000.00 ») per claim and «four million » ($ «4,000,000.00 ») in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ **3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ **3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ **3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ **3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ **3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ **3.2.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ **3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

~~§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.~~

§ **3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ **3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ **3.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ **3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ **3.3.2** The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services
§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services
§ 3.5.1 General
The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding
§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- **.1** facilitating the distribution of Bidding Documents to prospective bidders;
- **.2** organizing and conducting a pre-bid conference for prospective bidders;
- **.3** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- **.4** organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

~~**§ 3.5.3 Negotiated Proposals**~~
~~**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:~~

- ~~**.1** facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;~~

~~.2 organizing and participating in selection interviews with prospective contractors;~~
~~.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~
~~.4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~**§ 3.5.3.3** If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

§ 3.6 Construction Phase Services
§ 3.6.1 General
§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work
§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor
§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals
§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.
(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	**Responsibility** *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Not provided

Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	Not provided
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	Not provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	Not provided
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	Not provided
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not provided
§ 4.1.1.18 Facility support services	Not provided
§ 4.1.1.19 Tenant-related services	Not provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	Not provided
§ 4.1.1.22 Security evaluation and planning	Not provided
§ 4.1.1.23 Commissioning	Not provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25 Fast-track design services	Not provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

« »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

~~**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.~~

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- **.1** Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- **.2** Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- **.3** Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- **.4** Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- **.5** Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- **.6** Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- **.7** Preparation for, and attendance at, a public presentation, meeting or hearing;
- **.8** Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- **.9** Evaluation of the qualifications of entities providing bids or proposals;
- **.10** Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- **.11** Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- **.1** Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- **.2** Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- **.3** Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- **.4** Evaluating an extensive number of Claims as the Initial Decision Maker; or,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 «Two » («2 ») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 «Twenty one » («21 ») visits to the site by the Architect during construction

.3 «Two » («2 ») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 «Two » («2 ») inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within «thirty » («30 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

~~§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.~~

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

~~**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.~~

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** authorize rebidding or renegotiating of the Project within a reasonable time;
- **.3** terminate in accordance with Section 9.5;
- **.4** in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- **.5** implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

If 6.2 & 6.5 are used

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

[«~~X~~»] Arbitration pursuant to Section 8.3 of this Agreement

[« »] Litigation in a court of competent jurisdiction

[« »] Other: *(Specify)*

« »

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

«$50,000.00 »

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

«$50,000.00 »

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

~~.1 Stipulated Sum~~
~~*(Insert amount)*~~

~~« »~~

.2 Percentage Basis
(*~~Insert percentage value~~Initial 5.9% of the cost of construction based on architect's estimate or $6,500,000.00 subject to change as project progresses.*)

~~« » (« ») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

~~.3 Other~~
~~*(Describe the method of compensation)*~~

~~« »~~

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«Hourly rate of the person doing the work. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

«Hourly rate of the person doing the work. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus «ten » percent («10 »%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

« »

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	«Ten »	percent (	«10 »	%)
Design Development Phase	«Ten »	percent (	«10 »	%)
Construction Documents Phase	«Fifty five »	percent (	«55 »	%)
Procurement Phase	«Five »	percent (	«5 »	%)
Construction Phase	«Twenty »	percent (	«20 »	%)
Total Basic Compensation	one hundred	percent (	100	%)

~~§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.~~

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Employee or Category	Rate ($0.00)
Principal Architect	$150/hr
Architect	$140/hr
Architectural Designer	$130/hr
Interior Designer I	$110/hr
Interior Designer II	$75/hr
Drafts Person	$65/hr
Administrative - Architect	$55/hr
Principal Structural Engineer	$150/hr
Senior Structural Engineer	$140/hr
Licensed Structural Engineer	$125/hr
Structural Engineering Intern (EIT)	$100/hr
CAD Technician	$90/hr
Administrative - Structural	$50/hr

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- **.1** Transportation and authorized out-of-town travel and subsistence;
- **.2** Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- **.3** Permitting and other fees required by authorities having jurisdiction over the Project;
- **.4** Printing, reproductions, plots, and standard form documents;
- **.5** Postage, handling, and delivery;
- **.6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- **.7** Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- **.8** If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- **.9** All taxes levied on professional services and on reimbursable expenses;
- **.10** Site office expenses;
- **.11** Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- **.12** Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «ten » percent («10 » %) of the expenses incurred.

~~**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:~~
~~*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*~~

~~« »~~

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

~~**§ 11.10.1.1** An initial payment of « » ($ « ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

~~**§ 11.10.1.2** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of « » ($ « ») shall be made upon execution of this Agreement for registration fees and other fees payable to the~~

~~Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

«1.5 » % « »

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
~~*(Include other terms and conditions applicable to this Agreement.)*~~

«N/A »

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

« »

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

~~[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~
~~*(Insert the date of the E204-2017 incorporated into this agreement.)*~~

~~« »~~

[« »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

«N/A »

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

«N/A »

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	ARCHITECT *(Signature)*
« »« »	«Justin Oleson, AIA »«Vice President of Talent & Technology »
(Printed name and title)	*(Printed name, title, and license number, if required)*

RESOLUTION NO. 2022-31

A RESOLUTION TO ESTABLISH A SPECIAL MAINTENANCE FEE FOR THE PURPOSE OF MAINTAINING OR REPAIRING PUBLIC IMPROVEMENTS

WHEREAS, the City of Madison maintains and repairs street surfaces within the city limits; and

WHEREAS, SDCL 9-43-138 allows for an annual levy of a special maintenance fee upon the lots fronting and abutting any improvements within the City that are maintained by the City; and

WHEREAS, said special maintenance fee will be used for the annual maintenance and repair of street surfaces within the city limits;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA:

That a special maintenance fee will be established as follows:

1. Prior to the assessment of real property, the lot or portion of lots against which the special maintenance fee is to be levied and the amount of the special maintenance fee against each lot(s) or portions of lots constituting a single contiguous parcel for such purposes will be designated.

2. The county treasurer will be notified to add the fee assessed to the general assessment against the property and certify the fee assessed together with the regular assessment to the county auditor to be collected in the same manner as municipal taxes are collected for general purposes.

3. The special maintenance fee assessed is subject to review and equalization the same as assessments or taxes for general purposes.

4. The special maintenance fee will be assessed at the rate of $1.10 per front foot with a 125-foot maximum per lot or lots constituting a single contiguous parcel. Adjacent lots must have the same common majority ownership to be considered a single contiguous parcel for the purposes of this resolution.

Dated this __th day of June, 2022.

CITY OF MADISON

____
Mayor

ATTEST: ______________________
Finance Officer

Published once at the approximate cost of $__.

Request for Qualifications

City Engineering Services

City of Madison, SD

City of Madison

116 W. Center Street

Madison, SD 57042

RFQ Release Date – Tuesday, June 7, 2022

RFQ Due Date –2:00 pm, central time, Friday, July 8, 2022

Overview

The City of Madison is soliciting responses from firms with professional qualifications and experience in providing municipal engineering services. Statements of qualifications will be accepted from firms who can demonstrate they have the resources, experience, and qualifications to provide a range of engineering services. It is the City's intent to obtain engineering services on an on-call basis to act on behalf of the City of Madison in engineering related activities associated with City planning, infrastructure assessment, construction and maintenance. The successful firm will provide a single person who will serve as the City Engineer of Record and primary contact. The span of services requested herein need not be provided solely through or by that individual but may be provided by any number of qualified individuals within the firm selected.

For the purpose of this Request for Qualifications (RFQ), the term City Engineer will be used hereafter to refer to the successful firm.

The City Engineer will be required to provide most of the engineering service requested at or through their own facilities. The City does not provide an office or technical support for the work of the City Engineer. Limited office space is available at the City of Madison City Hall for occasional work or meetings as needed.

Scope of Services

In preparing a response to this Request for Qualifications (RFQ), the City Engineer shall address the following specific components that should be included in the scope of work. Services may not be limited to the items listed here. The final scope of work will be coordinated with the City staff and the selected City Engineer.

1. General Services
   a) The City Engineer shall be capable of performing numerous disciplines such as general civil engineering, planning, surveying, construction management, environmental reviews, floodplain management, or at a minimum have the ability to coordinate with firms that provide such services.
   b) Attendance at meetings of the City Commission. The City Engineer shall attend meetings of the City Commission when requested. Attendance will not be expected at every meeting, and attending via a teleconference service may be acceptable depending on the item. Regular meetings are held on the first and third Monday evening of each month.
   c) Advising Officials. The City Engineer shall advise City officials, employees, etc. through telephone conferences, meetings, and correspondence.
   d) Consultation on City utilities and facilities. The City Engineer shall furnish advice and consultation to the City of Madison on the operation, maintenance, and permitting of the City's water distribution system, stormwater drainage system, transportation system, and other City-owned facilities.
   e) Identify capital projects. The City Engineer shall prepare the annual Infrastructure Improvement Plan (IIP) and will identify current and possible future capital projects and document budget, scope, schedule, and assist in funding sources.
   f) The City Engineer shall review and provide professional services for a variety of issues including plat review and approvals, right-of-way requirements (acquisitions, dedications, and easements), drainage and flood control, subdivisions and planned unit development agreements.
   g) Subdivision regulations. The City Engineer shall provide enforcement of the City Subdivision Regulations and shall review project plans and proposals by private parties for compliance with City Ordinances and other applicable requirements. The City Engineer shall meet with residents, contractors, developers, engineers, etc. as requested.

h) Capital project tracking. The City Engineer shall assist City staff and may be asked to track and monitor project status and specific milestone completion. The City Engineer will facilitate discussions and decisions necessary to keep projects on schedule with the Engineering and Community Development Director.
i) Monitor budgets. The City Engineer may be asked to assist the City staff with monitoring budget expenditures and assist with review of contracts, proposals, invoices, and purchase orders.
j) Ordinance advisement and recommendation. The City Engineer shall recommend regulations and ordinances pertaining to engineering and development matters to the City.
k) Design standards recommendations. The City Engineer shall recommend design details and assist in the development of specifications for the City of Madison.

2. Drainage Reviews
   a) The City Engineer will perform review of all drainage plans submitted for site development within the City.
3. Environmental Services and Regulatory Agency Interactions:
   a) The City Engineer will provide assistance to City staff and provide technical review of and answer inquiries relating to site, building, subdivision, improvement, land disturbance, floodplain development, and construction plans to ensure that such conform to City Ordinances and all State and Federal regulations as requested.
4. Project Funding
   a) The City Engineer will provide assistance to City staff in researching, applying for, and obtaining project funding in the form of grants, loans, and other sources.
5. Professional Engineer Requirement
   a) The selected firm must assign to the City a minimum of one (1) staff person who is a Professional Engineer licensed to practice in the State of South Dakota.
6. Other Considerations
   a) The City of Madison prefers firms that specialize in representing municipal entities.
   b) The City Engineer must commit to provide services to the City in a timely manner.

Response Content

Responses must adhere to the requirements outlined in this section. The original statement of qualifications and each subsequent copy must be submitted on paper, properly bound, and appropriately labeled in the following order:

1. Introduction: Provide a cover letter and introduction including the name and address of the firm with the name, address, telephone and fax numbers, and e-mail address of the contact person who will be authorized to make representations for the organization. A summary shall be provided with an overview of the statement of qualifications, its highlights, and the approach to engineering services.
2. Techniques or Methodology: Include a discussion of how your current and past experience will enable you to effectively and efficiently represent the City of Madison as City Engineer. Also provide a copy of promotional literature for engineering services by your firm.
3. Qualifications: Describe the firm's resources, experience, and capabilities as follows:
   a) Provide an outline of the firm's background, qualifications, and ability to perform the scope of services required.
   b) Please provide the name and qualifications of the individual who will serve as City Engineer including a résumé which describes the qualifications of this individual.
   c) Identify all key personnel who will assist the City Engineer, relevant qualifications and experience, and their level of effort toward completing all needed tasks.
4. Capacity: Provide a brief outline of the firm's current workload, staffing, and ability to meet the schedule and deadlines. Include any limitations you would foresee in the ability of your firm to handle certain types of work,

or work capacity limitations.

5. References: Please provide the name and contact information for two references familiar with your firm (preferably municipal governments in South Dakota).
6. Fees: State the hourly rate applicable to each person or position expected to participate in providing engineering services to the City. Please describe additional costs such as travel, copying, or other activities which are anticipated or normally provided.
7. Basis for Compensation – The City is interested in reviewing a sample bill for a municipal client that illustrates the detail that would be included in billings to the City of Madison.

Insurance Requirements

1. Insurance – Proof of Insurance must be provided for:
    a. Commercial General Liability, $1 million combined single limit per occurrence and general aggregate.
    b. Comprehensive Auto Liability, $1 million combined single limit per occurrence.
    c. Workers Compensation

Response Submittal

To be considered, please submit 3 hard copies and an electronic copy of your statement of qualifications to:

City of Madison
Attn: City Administrator
116 W. Center Street
Madison, SD 57042

Responses received after the due date of July 8, 2022 at 2:00 p.m. central time will not be considered.

Questions regarding this request for qualifications may be directed to City Administrator, City of Madison, 116 W. Center Street, Madison, SD 57042 or by email at: jameson.berreth@cityofmadisonsd.com

Review and Selection Procedure

The City Administrator in conjunction with the City Commission will evaluate each statement of qualifications and select a City Engineer. All proposals will become part of the City's public record. The City reserves the right to reject any or all proposals and is not bound to accept the lowest-cost proposal. The City also reserves the right to negotiate an agreement with any one of the responding firms based on its review of the proposals and interviews with selected firm(s). The City will not be liable for any costs incurred by firms responding to this request. The City may issue subsequent RFP's and enter into professional service agreements with firms other than the firm selected as the City Engineer for engineering studies, project design, construction services, or other services when deemed advantageous to the City.

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Change Order No. 1

Date of Issuance: 5/25/2022	Effective Date: 6/7/2022
Owner: City of Madison	Owner's Contract No.:
Contractor: J & J Earth Works, Inc.	Contractor's Project No.:
Engineer: Banner Associates, Inc.	Engineer's Project No.: 22831.00
Project: Madison Water System Improvements Phase 1B	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:
-Additional work included in RFP #1 to install 12-inch sanitary sewer extension on N West Avenue from 6th Street to 7th Street. Work to be performed in accordance with Phase 1B project specifications.

Refer to drawings for West Avenue Sanitary Sewer Improvements dated 3/18/2022.

Attachments: Additional quantities spreadsheet.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES *[note changes in Milestones if applicable]*
Original Contract Price: $ 4,854,199.55	Original Contract Times: Substantial Completion: October 1, 2022 Ready for Final Payment: November 15, 2022 days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: $ 0	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: N/A Ready for Final Payment: N/A days
Contract Price prior to this Change Order: $ 4,854,199.55	Contract Times prior to this Change Order: Substantial Completion: Same as above Ready for Final Payment: Same as above days or dates
[Increase] ~~[Decrease]~~ of this Change Order: $ 179,757.67	[Increase] [Decrease] of this Change Order: Substantial Completion: ___ Ready for Final Payment: ___ days or dates
Contract Price incorporating this Change Order: $ 5,033,957.22	Contract Times with all approved Change Orders: Substantial Completion: ___ Ready for Final Payment: ___ days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: Pat Carey, PE	By:	By: [signature]
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: Prime Professional	Title Mayor	Title Vice President
Date: 5/25/2022	Date	Date 5/27/22

Approved by Funding Agency (if applicable)

By: ______________________ Date:

Title: ______________________

BANNER
Banner Associates, Inc.
409 22nd Ave So, Box 298
Brookings, SD 57006
Tel 605.692.6342
Toll Free 855.323.6342
www.bannerassociates.com

CHANGE ORDER #1 - WEST AVENUE SANITARY SEWER IMPROVEMENTS

PROJECT Madison Water System Improvements - Phase 1B Base Bid
BAI NO 22831.00.00
LOCATION Madison, SD
DATE May 23, 2022

	SPEC. SECTION	DESCRIPTION	UNITS	TOTAL QUANTITY	UNIT PRICE	TOTAL VALUE
		PHASE 1B - RFP#1				
	GENERAL ITEMS					
1	01 0000 - 5.4	Traffic Control Signs	SqFt	71.5	$2.00	$143.00
2	01 0000 - 5.4	Type 2 Barricade	Each	2	$15.00	$30.00
3	01 0000 - 5.4	Type 3 Barricade, 8' Double Sided	Each	11	$30.00	$330.00
4	**EROSION CONTROL**					
	31 2400 - 4.8	Placing Contractor Furnished Topsoil	CuYd	49	$34.00	$1,666.00
5	32 9200 - 4.1	Seeding	Lb	37	$16.00	$592.00
6	32 9200 - 4.3	Fertilizing	Lb	32	$2.30	$73.60
7	32 9200 - 4.4	Weed Control	SqYd	581	$0.10	$58.10
8	32 9200 - 4.2	Hydro-Mulching	Ton	0.3	$4,800.00	$1,440.00
9	33 9200 - 4.2	Temporary Seeding	Lb	4	$25.00	$92.50
10	31 2500 -4.1	Erosion Control Blanket	SqYd	117	$2.60	$304.20
11	31 2500 - 4.2	Inlet Protection	Each	2	$75.00	$150.00
12	31 2500 - 4.5	Manhole Construction Plate Marker	Each	1	$125.00	$125.00
13	**REMOVALS**					
	31 2300 - 4.2	Clear and Grub Tree	Each	2	$1,150.00	$2,300.00
14	31 2300 - 4.2	Remove Concrete Curb and Gutter	LF	385	$5.50	$2,117.50
15	31 2300 - 4.2	Remove Concrete Pavement	SqYd	100	$7.00	$700.00
16	31 2300 - 4.2	Remove Concrete Sidewalk	SqYd	95	$6.50	$617.50
17	31 2300 - 4.2	Saw Existing Asphalt	LF	165	$5.00	$825.00
18	31 2300 - 4.2	Saw Existing Concrete	LF	170	$5.50	$935.00
19	**GRADING**					
	31 2400 - 4.3	Unclassified Excavation	CuYd	610	$9.75	$5,947.50
20	31 2400 - 4.4	Unclassified Excavation, Digouts	CuYd	60	$10.50	$630.00
21	31 2400 - 4.5	Scarify and Recompact Subgrade	SqYd	1430	$0.85	$1,215.50
22	31 2400 - 4.6	Compaction - Moisture Density Tests	Each	10	$150.00	$1,500.00
23	31 2400 - 4.7	Water For Embankment	Mgal	6.1	$35.00	$213.50
24	31 2400 - 4.9	Full Depth Reclamation	SqYd	1280	$1.30	$1,664.00
25	31 2400 - 4.10	Salvage and Stockpile Asphalt Mix and Granular Base Material	SqYd	1280	$3.35	$4,288.00
26	**SANITARY SEWER**					
	33 3000 - 4.2	Remove Sanitary Sewer Manhole	Each	1	$375.00	$375.00
27	33 3000 - 4.3	4" Dia Gravity Sewer Pipe	LF	280	$31.00	$8,680.00
28	33 3000 - 4.3	8" Dia Gravity Sewer Pipe	LF	65	$57.00	$3,705.00
29	33 3000 - 4.3	10" Dia Gravity Sewer Pipe	LF	6	$67.00	$402.00
30	33 3000 - 4.3	12" Dia Gravity Sewer Pipe	LF	314	$76.00	$23,864.00
31	33 3000 - 4.6	12"x4" Sanitary Sewer Service Connection	Each	8	$325.00	$2,600.00
32	33 3000 - 4.7	48" Dia Sanitary Sewer Manhole	Each	1	$4,200.00	$4,200.00
33	33 3000 - 4.7	Manhole Drop Section	Each	1	$1,800.00	$1,800.00
34	33 3000 - 4.9	Connect to Existing Sanitary Sewer Pipe	Each	3	$300.00	$900.00
35	33 3000 - 4.12	Adjustment of Manhole and Cover	Each	1	$275.00	$275.00
36	33 3000 - 4.13	Tracer Wire - Sanitary	LF	665	$0.30	$199.50
37	**SURFACING**					
	32 1123 - 4.3	Water For Granular Material	MGal	13	$22.00	$286.00
38	32 1123 -4.1	Base Course	Ton	1060	$17.50	$18,550.00
39	31 2400 -4.7	Subbase Foundation Aggregate	Ton	106	$22.50	$2,385.00
40	32 1216 -4.1	Asphalt Concrete	SY	1270	$25.50	$32,385.00
41	32 1216 -4.2	Asphalt Concrete Sampling and Testing	Each	1	$850.00	$850.00
42	32 1613 -4.4	PCC Approach Pavement, 6" Thick	SqYd	101	$68.00	$6,868.00
43	32 1613 -4.1	Concrete Curb & Gutter	Ft	385	$15.50	$5,967.50
44	32 1613 - 4.6	4" Concrete Sidewalk	SqFt	845	$7.60	$6,422.00
45	32 1613 - 4.8	Concrete Sampling and Testing	Each	2	$200.00	$400.00
46	32 1613 - 4.9	Type B Detectable Warnings	SqFt	40	$40.00	$1,600.00
					SUB-TOTAL =	$150,671.90
	ADDITIONAL LINE ITEMS					
		MOBILIZATION, BONDS AND INSURANCE	LS	1	$29,085.77	$29,085.77
					SUB-TOTAL =	$29,085.77
					TOTAL =	$179,757.67

CITY OF MADISON
SIDEWALK VARIANCE APPEAL

Date 05-06-2022

I (we), Stephen Lien of 114 North Olive Ave
Name — Mailing Address

respectfully request that a variance be granted to sidewalk standards as outlined in the City of Madison Resolution No. 2684, Article IV, Division I, Section 18.59 due to extraordinary hardship. 270-1183

114 N. Olive Avenue
Property Address

Legal Description: S ½ Lots 4-5-6 Blk 9 Waddells Addition

Specific Variance Request: Applicant seeking to encroach into 5 foot back of curb area where sidewalk is prohibited. Encroachment is detailed on attached drawing.

APPLICANT SUBMITS THE FOLLOWING:

1) Letter of Explanation Attached: ______ Yes __X__ No

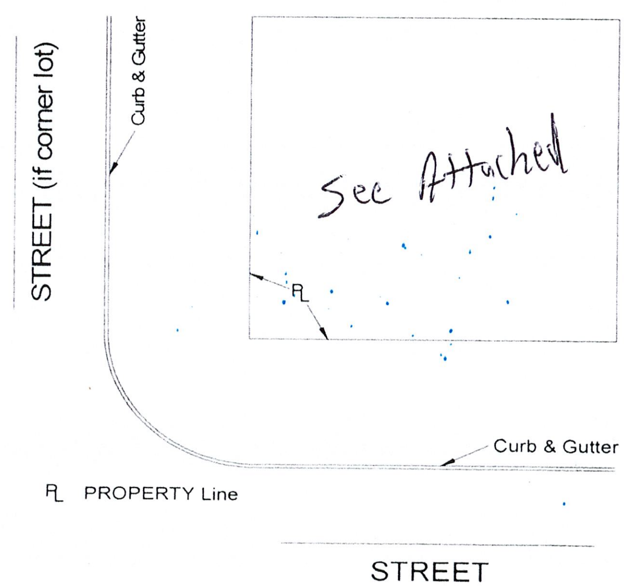
I (we) further state that if this request is granted, I (we) will proceed with the actual construction in accordance with the plans herewith submitted.

Date: 05-06, 2022.

Signature of Applicant(s)

INSTRUCTIONS TO APPLICANT

Depict location of proposed sidewalk improvements.



CITY OF MADISON
SIDEWALK VARIANCE APPEAL

5-6-22
Date ~~4-9-21~~

I (we), Murry Smith of 122 North Olive Ave.
Name — Mailing Address

respectfully request that a variance be granted to sidewalk standards as outlined in the City of Madison Resolution No. 2684, Article IV, Division I, Section 18.59 due to extraordinary hardship. 659-5776 Phone #

122 North Olive Avenue
Property Address

Legal Description: N 1/2 Lots 4-5-6 Block 9 Waddells Addition

Specific Variance Request: Applicant seeking to encroach into 5 foot back of curb area where sidewalk is prohibited. Encroachment is detailed on attached drawing.

APPLICANT SUBMITS THE FOLLOWING:

1) Letter of Explanation Attached: ______ Yes __X__ No

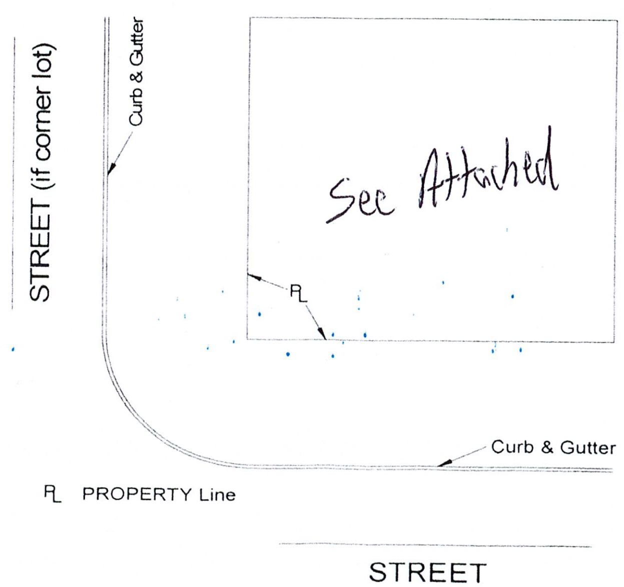
I (we) further state that if this request is granted, I (we) will proceed with the actual construction in accordance with the plans herewith submitted.

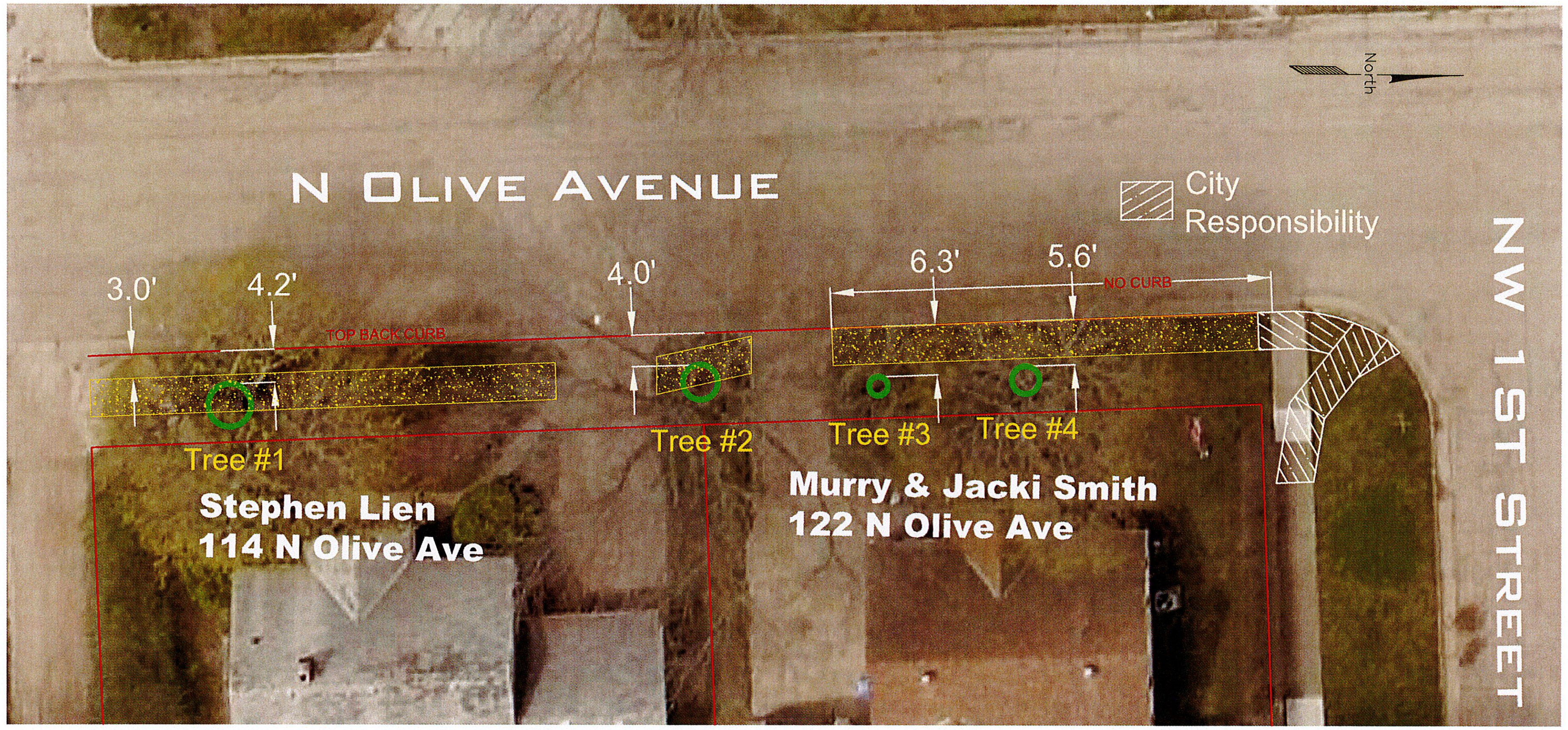
Date: 5-6-22, 20 22.

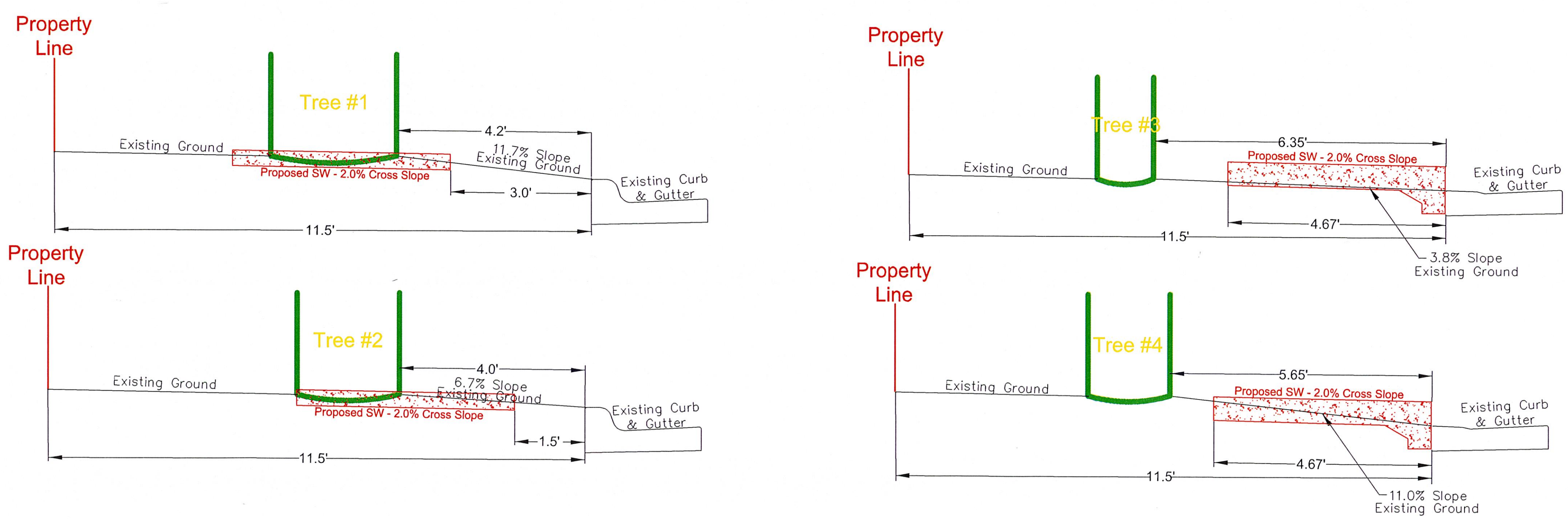
Murry Smith
Signature of Applicant(s)

INSTRUCTIONS TO APPLICANT

Depict location of proposed sidewalk improvements.







116 W Center Street
Madison, SD 57042
Phone: (605) 256-7514

MADISON
Engineering Department

Sidewalk Improvement Project 2021-1

CITY OF MADISON
LAKE COUNTY, SOUTH DAKOTA

PROJECT NO.:	2021-1
SURVEYED BY:	DJW
CREATED BY:	DJW
APPROVED BY:	CAC
REVISION DATE:	

S GRANT & NW 1ST ST

CITY OF MADISON
SIDEWALK VARIANCE APPEAL

Date 05-09-2022

I (we), Jesse Doblar of 611 SE 1st Street
Name — Mailing Address

respectfully request that a variance be granted to sidewalk standards as outlined in the City of Madison Resolution No. 2684, Article IV, Division I, Section 18.59 due to extraordinary hardship.

611 SE 1st street, Madison, SD 57042
Property Address

Legal Description: West ½ of lot 6 and all of lot seven in block 16 of town proprietors second addition to Madison, Lake County, SD

Specific Variance Request: I would like to shorten the side to side transition rate from where my new sidewalk will meet the neighbors existing sidewalk. My sidewalk will be 5' from curb and their existing is 20' from curb.

APPLICANT SUBMITS THE FOLLOWING:

1) Letter of Explanation Attached: ✓ Yes ______ No

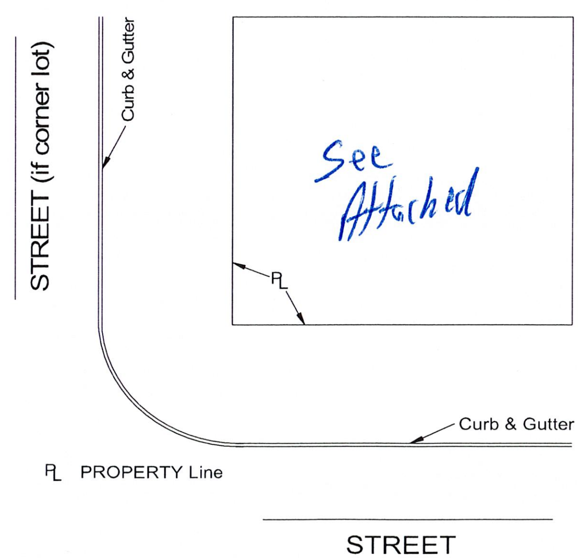
I (we) further state that if this request is granted, I (we) will proceed with the actual construction in accordance with the plans herewith submitted.

Date: 05-09-2022, 2022.

Signature of Applicant(s)

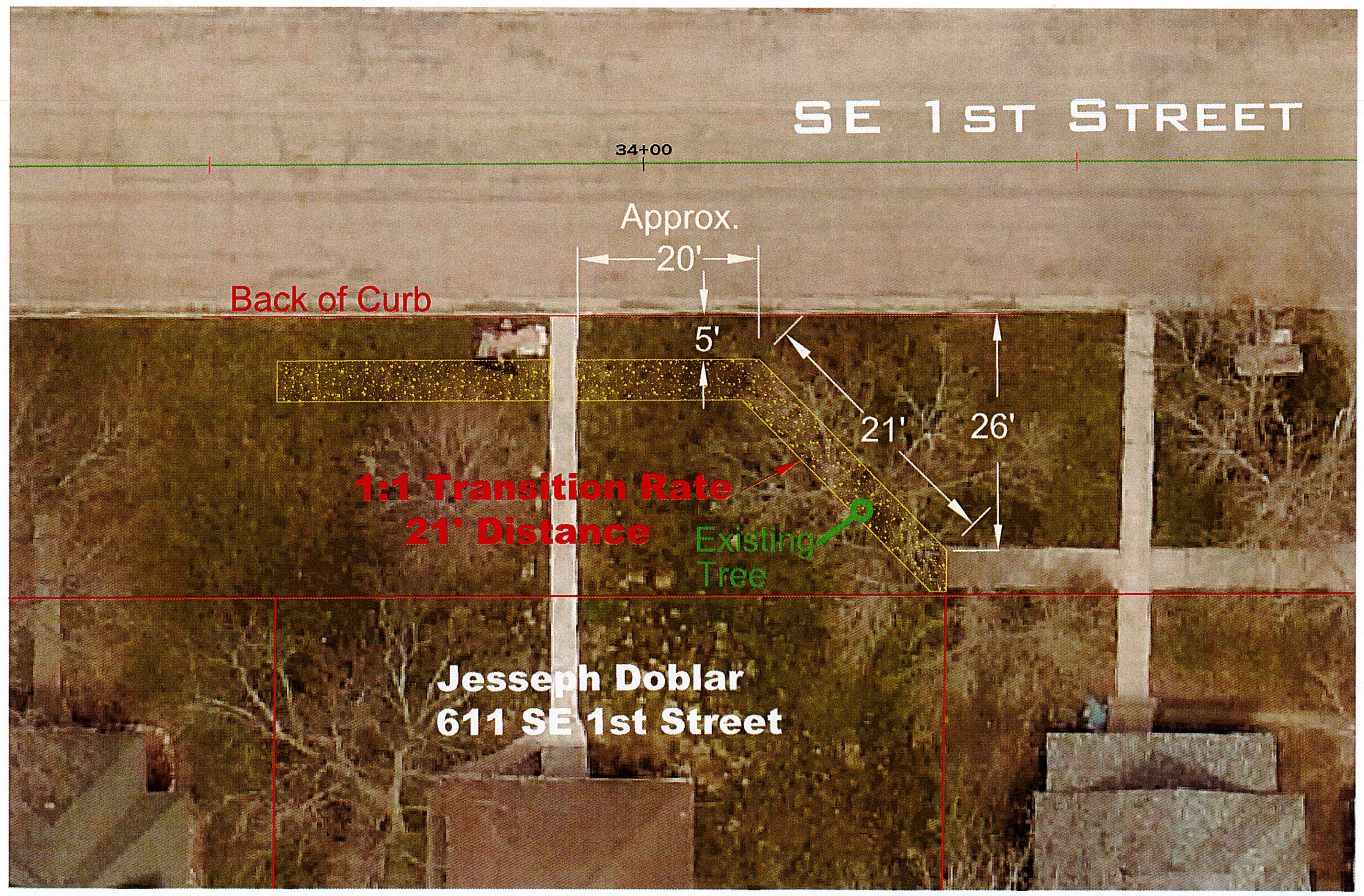
INSTRUCTIONS TO APPLICANT

Depict location of proposed sidewalk improvements.



Letter of explanation

I would like a Variance to the side to side transition rate. From the neighbors' existing sidewalk to where my new sidewalk will go there is a 15' difference. from the curb line. I would like to transition towards the curb line as quickly as possible and keep as much sidewalk parallel to the street as possible. I want to keep sidewalk further away from the house. Map enclosed.



North

SCALE:
NTS

Note: Property line locations and sidewalk dimensions and locations are approximate

LEGEND
- Property Lines
- Mainline Sidewalk
- ADA Ramps & Alleys

116 W Center Street
Madison, SD 57042
Phone: (605) 256-7514

MADISON
Engineering Department

Sidewalk Improvement Project 2022-2

CITY OF MADISON
LAKE COUNTY, SOUTH DAKOTA

PROJECT NO.:	2022-2
SURVEYED BY:	DJW
CREATED BY:	DJW
APPROVED BY:	DJW
REVISION DATE:	

SE 1ST STREET

SIDEWALK COMMITTEE MEETING MINUTES
City Commission Room
Friday, May 20, 2022
3:00 PM

Committee Members: Jeff Lechner, Scott Nold, Sharon Knapp, Joe Keffeler. Exoffico Members: City Commissioner Adam Shaw, City Engineering Technician Dan Whitlock.

The following members were present at the meeting: Joe Keffeler, Scott Nold, Sharon Knapp, Adam Shaw and Dan Whitlock. Also present: Jesse Doblar. Absent was Jeff Lechner

The meeting was called to order at 3:00 PM

Motion by Ms. Knapp, 2nd by Mr. Nold to approve minutes of November 4, 2021. Motion carried unanimously.

Motion by Ms. Knapp, 2nd by Mr. Nold to approve agenda. Motion carried unanimously.

Provide Recommendation on Sidewalk Variance Appeal Jesse Doblar – 611 SE 1st Street – Mr. Doblar spoke and explained that he is proposing a steeper transition rate on his sidewalk to achieve a 5' offset off of the back of the cub. The steeper transition rate is wanted due to the proximity of his house with having the 100 foot ROW along SE 1st Street. He said that he visited with his 2 neighbors to his West and that they agreed to place their sidewalk at the minimum allowed 5 foot offset off of the back of the curb. Dan Whitlock spoke on the matter. He explained that the 1:1 transition rate that Mr. Doblar is asking for will be approximately 21 feet in length. The standard transition rate that the City of Madison has adopted is a 5:1 rate. Due to the narrow lots and having a 100 foot ROW along SE 1st Street makes it difficult to have enough room to transition at a 5:1 rate when tying into an existing Sidewalk that is on the existing property line. It was asked if there were any drawbacks to a 1:1 transition rate. The only thing brought up was a person on a bike, scooter, etc. navigating the steeper transition and staying on the sidewalk if not paying attention.

Ms. Knapp made motion that the committee recommended to the City Commission that Jesse Doblar – 611 SE 1st Street variance be approved, seconded by Mr. Nold. Motion carried unanimously.

Provide Recommendation on Sidewalk Variance Appeals Murry Smith and Stephen Lien 114 & 122 North Olive Avenue. – Mr. Whitlock explained that Mr. Lien and Mr. Smith were asking for a variance to encroach on the allowed 5' curb offset sidewalk setback. Mr. Lien is asking for a 3-foot setback and Mr. Smith is asking for curbside sidewalk. The ROW along Olive Avenue is 60 feet wide leaving only a 6-foot area to install sidewalk. Steven & Murry both want to encroach on the 5-foot setback to move the sidewalk further from their homes and have some room to replant trees if needed. The 5:1 transition rate would be met on the south end of Mr. Liens property and between Mr. Lien's and Mr. Smith's property. The issue of safety was brought up with having curbside sidewalk. Dan added that while it is not ideal having curbside sidewalk the two busiest streets in Madison have curbside sidewalk installed. Olive Avenue sees significantly less traffic than Second Street and Washington Avenue.

Ms. Knapp made motion that the committee recommended to the City Commission that Stephen Lien – 114 N Olive Avenue variance be approved, seconded by Mr. Nold. Motion carried unanimously.

Ms. Knapp made motion that the committee recommended to the City Commission that Murry Smith – 122 N Olive Avenue variance be approved, seconded by Mr. Nold. Motion carried unanimously.

Motion to Adjourn by Ms. Knapp second by Mr. Keffler

Adjourned at 3:28 PM.

ADVERTISEMENT FOR BIDS

Notice is hereby given that on the 30th day of June 2022, at 1:00 pm, sealed bids will be received by the Board of Commissioners of the City of Madison, South Dakota, at the Office of the Finance Officer, 116 W Center Street, Madison, South Dakota 57042 and will then be publicly opened and read.

BID NO. 913 – NW 9TH STREET/UNION AVENUE RECONSTRUCTION 2022-1

Utility and surfacing replacement on NW 9th Street from Highland Avenue to a point approximately 500 feet west of Egan Avenue and on that portion of N Union Avenue situated north of NW 9th Street. Significant components of the improvements include the following items and approximate quantities: 16,000 square yards of asphalt pavement removal; 3,200 linear feet of water main sized 6” to 12” diameter; 272 feet of directional drilling of 12” diameter water main; 23 water services; 3,200 linear feet of storm sewer sized 12” to 30” diameter; 1,800 linear feet of sanitary sewer sized 6” to 10” diameter; 20,000 square yards of geotextile fabric; 12,000 tons of granular materials; 7,400 linear feet of concrete curb and gutter; 3,660 tons of asphalt concrete surfacing; 10,000 square feet of concrete sidewalk; 8,000 linear feet of pavement markings; erosion control; miscellaneous electrical; 31 signs and 95 square feet of permanent signing; and other appurtenant items.

OBTAINING THE BIDDING DOCUMENTS

The bid and contract documents may be accessed at https://www.houstoneng.com by clicking “Bid Info” which will redirect to QuestCDN.com where the bid documents may be viewed at no cost prior to deciding to become a Plan Holder. To be considered a Plan Holder for bids, a bidder may register with QuestCDN.com and purchase the contract documents in digital form at a cost of thirty dollars ($30.00). Registering as a Plan Holder is recommended for all prime contractors (potential bidders), subcontractors, and suppliers, as Plan Holders will receive automatic notice of addenda and other contract document updates via QuestCDN. Contact QuestCDN Customer Support at 952-233-1632 or info@questcdn.com for assistance with viewing online information, downloading digital project information, and/or membership registration.

Additionally, upon request, in accordance with South Dakota Codified Law 5-18B-1, one copy of Plans and Specifications shall be furnished, without charge, to each Contractor resident in South Dakota who intends, in good faith, to bid upon the project by contacting the Issuing Office: Office of the City Engineer, 116 W Center Street, Madison, South Dakota 57042. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the Issuing Office.

NON-DISCRIMINATION

The City of Madison is committed to providing non-discriminatory employment and services. No person shall, on the basis of a person’s nation origin, race, color, disability, sex, age and/or income status, be excluded from participation or be subjected to discrimination or harassment by the City of Madison.

PROJECT FUNDING

This project will be subject to the rules and requirements set forth in the State Revolving Fund (SRF) with Davis-Bacon & American Iron and Steel Provisions. Davis Bacon and Related Acts wages and American Iron and Steel Provisions apply to this project. All provisions relative to those acts must be met.

Bidders on this work will be required to comply with Title 40 CFR Part 33 and Executive Order 12138 – Participation by Disadvantaged Business Enterprises (DBE) in the United States Environmental Protection Agency Programs. The requirements for bidders and contractors under this regulation concern utilization of Minority Business Enterprises (MBE), Women’s Business Enterprises (WBE), and Small Business Enterprises (SBE) and are explained in the specifications. Bids provided without MBE or WBE documentation will not be accepted.

The goal for MBE is 1% of the total dollar value of the project. The goal for WBE is 4% of the total dollar value of the project. To demonstrate a good faith effort to comply, bidders must acknowledge the MBE/WBE subcontractor solicitation information in the bid package.

Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended, 11518 and 11625. The requirements for bidders and contractors under this order are explained in the specifications.

Bidders on this work will be required to comply with American Iron and Steel requirements of the Consolidated Appropriations Act, 2014. The requirements for bidders and contractors under this regulation are explained in the specifications.

The low responsive bidder will be required to certify to compliance with the American Iron and Steel provision of the Consolidated Appropriations Act of 2014. This certification form may be found on page AIS-21 of the State Revolving Fund (SRF) General Conditions and must be included in the bid proposal.

Please be advised that waivers or exemptions from the American Iron and Steel provision that cite International Trade Agreements DO NOT comply with the Consolidated Appropriations Act of 2014 as it applies to the SRF programs. Claims from suppliers that the American Iron and Steel provision does not apply to certain products based on the International Trade Agreement exemptions of the Consolidated Appropriations Act of 2014 will not be accepted.

In 2018 Public Law 115-232 was passed which prohibits certain telecommunications and video surveillance services or equipment provided by specific companies. Effective August 13, 2020 these requirements became effective for all State Revolving Fund funded projects and applies to both projects previously bid and projects yet to bid.

Plans and specifications submitted for all SRF funded projects will need to have a Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment included in the SRF General Conditions. An electronic version of the updated SRF General Condition is available at https://denr.sd.gov/formsprogram.aspx#Funding

INSTRUCTIONS TO BIDDERS

Bids must be accompanied by a certified check, cashier's check or bank draft payable to the City of Madison in a sum equal to five percent (5%) of the total bid and drawn on a state or national bank or by a bid bond in a sum equal to ten percent (10%) of the total bid issued by a surety authorized to do business in the State of South Dakota and made payable to the City of Madison. The check or bond will be retained by the owner as liquidated damages if the successful bidder refuses or fails to enter into a contract in accordance with the bid when notified of the award.

Bid Envelopes must be clearly marked Bid No. 913 – NW 9th Street/Union Avenue Reconstruction 2022-1. For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

Davis-Bacon wage rates will apply to this project in its entirety.

'Based on the "Build America, Buy America" provisions of the Infrastructure Investment and Jobs Act (IIJA) and E.O. 14005 which provide that, as appropriate and to the extent consistent with law, a preference will be provided to Contractors for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to non-iron and steel metals, lumber, cement, and other manufactured products.)'

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders included in the Bidding Documents.

The City of Madison reserves the right to reject any and all bids in part or total, to waive any irregularities and to add or deduct from the proposed work.

By Order of the Board of Commissioners
City of Madison
Madison, South Dakota
Sonya Wilt
Finance Officer

Published twice at the approximate cost of $_.

June 3, 2022

City Commission
City of Madison, SD
116 W Center Street
Madison, SD 57042

Members of the Commission:

The below have conducted a review of proposals received in response to the Generator Plant Operating System Update Request for Proposals issued on February 25, 2022. A review of the proposals was conducted and the recommended system is the one offered by Harold K. Scholz Company, located in Ralston, NE. The proposed solution is priced at $410,000.00 and includes two main components:

- PART 1 – Fuel Consumption & Mechanical Monitoring Control & Reporting ($230,000.00)
    - 5 – Upgrade of existing Cat Engine Management Control Panels (EMCPs) to version 4.x
    - 5 – Net engine fuel consumption measurement, reporting and interface components
    - 1 – Allen Bradley ContrlLogix Programmable Logic Controller (PLC), rack, power supply & I/O
    - 1 – Human Machine Interface (HMI) computer, monitor and report printer
    - 1 – Lot PLC and HMI programming based on Rockwell Studio 5000 Software.
    - 1 – Lot of PLC and auxiliary interface devices
    - 7 – Electro-Industries Shark 100 multi-function meters
    - 2 – Room temperature monitoring devices
    - 1 – Lot misc. control switches, relays and control
    - 1 – Lot field installation of above components
    - 1 – Lot field commissioning, testing and training
    - 1 – Lot as-built drawings, programming code and instruction documentation
- PART 2 – New Automated Generator & Switchgear Electrical Control Systems ($180,000.00)
    - 1 – Lot additional Allen Bradley PLC I/O modules
    - 1 – Lot additional PLC and HMI programming based on Rockwell FactoryTalk SE
    - 1 – Lot of PLC and auxiliary interface devices
    - 5 – Woodward SPMA automatic synchronizers
    - 5 – Woodward LSM load sharing modules
    - 1 – Master engine run switch and generator loading controls
    - 1 – Master preferred source (Utility-Parallel-Generation) control module
    - 5 – Individual engine-generator run, on-line, loading and power factor controls

A total of five proposals were received (Advanced Power Technologies, Harold K. Scholz Company, OATI, Powertech, and Schweitzer Engineering Laboratories).

In the initial review, Schweitzer Engineering Laboratories was immediately eliminated from consideration because their solution was incomplete and was deemed insufficient to meet the needs of the City of Madison. Questionnaires were sent to the other four proposers to better understand their proposed solutions.

After the review of responses received, two more companies were eliminated from consideration, Advanced Power Technologies and OATI. Advanced Power Technologies failed to provide a response to the questionnaire and their proposal was deemed unresponsive. OATI provided responses, but a review of their proposal revealed significantly higher costs to achieve parity with the other two proposals, in both upfront and recurring expenses. As a result, the remaining two companies, Harold K. Scholz Company and Powertech were invited to attend an in-person meeting as finalists in Madison on May 20, 2022 with Madison's Utility Director and members of The Shpigler Group and DGR Engineering.

Costs for both providers were fairly comparable ($410,000 for Harold K. Scholz Company; $443,197 for Powertech) and both teams appear to have the technical capabilities needed to deploy and maintain the system. The key deciding points in favor of Harold K. Scholz Company included:

- Scholz's references were extremely strong. The references contacted involved projects that were very close in nature to Madison's requirements and each reference expressed their happiness with dealing with Scholz, their technical competence, and their responsiveness.
- Powertech's references were good, but not quite as strong. Their clients were very happy with their services, but only one of the references involved a deployment that was comparable to Madison's requirements. The other references involved much more limited projects where Powertech did not deploy a system but simply provided maintenance.
- Scholz has a staff of 38 professionals, including 3 dedicated technicians who would provide ongoing support. The Powertech team featured a total of under ten people across three companies, one of whom would provide ongoing technical support.
- The Harold K. Scholz Company has been in business of over 50 years and has deployed systems similar to what Madison requires. By comparison, the Powertech team features a combination of three different entities (Powertech, Neotech, and an AZZ contractor) who would come together to provide the proposed solution. However, they have never worked on a project jointly that compares to this effort.
- Both vendors offered reporting capabilities that would satisfy Madison's needs; however, the Scholz offering featured stronger reporting capabilities.