BOARD OF COMMISSIONERS AGENDA
Monday, April 3, 2023
5:30 PM – COMMISSION ROOM – 116 W CENTER ST

Please join the Zoom meeting from your computer, tablet or smartphone.
https://us06web.zoom.us/j/89180524663

Meeting ID: 891 8052 4663
You can also dial in using your phone.
+1 312 626 6799

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ADOPT AGENDA

APPEARANCES/ACKNOWLEDGEMENTS

CONSENT CALENDAR
1) Minutes – March 20, 2023
2) BOE Minutes – March 21, 2023
3) Bills for Approval – April 05, 2023
4) Bills for Ratification – March 29, 2023 & March 22, 2023
5) Payroll Bills for Ratification – March 31, 2023
6) Personnel

UNFINISHED BUSINESS
1) Discussion on overnight parking restriction on Egan Avenue between 2nd St N and 2nd St S

NEW BUSINESS
1) Proclamation – National Small Business Week
2) Authorize Mayor to Sign Sodexo Concession Contract for Madison Aquatic Center
3) Approve Flynn/Thue field usage agreement with DSU
4) Award bid of Electric Distribution Conversion – 2023 project to Dakota Directional LLC

PUBLIC COMMENT

ANNOUNCEMENTS
1) Holiday Closure April 7th & April 10th, 2023
2) Next Regular Commission Meeting – Monday, April 17, 2023 at 5:30 pm

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
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

March 20, 2023
Regular

The Board of Commissioners of the City of Madison met in regular session at 5:30pm on the 20th day of March with the following members present on roll call: Commissioners Jeremiah Corbin, Jerae Wire, Kelly Dybdahl, Adam Shaw and Mayor Lindsay.

The Pledge of Allegiance was recited.

Motion by Commissioner Dybdahl, seconded by Commissioner Shaw to adopt the amended March 20th agenda. Motion carried unanimously.

Motion by Commissioner Shaw, seconded by Commissioner Wire, to approve the following items on the consent calendar. Minutes March 6, 2023, Bills for Approval – March 22, 2023, Bills for Ratification – March 15, 2023, Payroll Bills for Ratification – March 17, 2023, Personnel, Authorize Mayor to Sign Application for SDML Safety Equipment Grant, Approve Application for Property Tax Abatement 2023-11, 2023-12, Approve Application for Property Tax Abatement from Storm Damage 2023-06, 2023-08, 2023-09, 2023-10, Acknowledge Bid Date – Bid No. 922 – Hay Ground – April 12, 2023 at 2:00 pm, Acknowledge Bid Date – Bid No. 923 – Water Department Building Renovation Project – April 21, 2023 at 2:00 pm.

Bills for Approval – March 22, 2023
A A A COLLECTIONS INC, March 23 Collection Services, $146.81, ACCUSHAPE INC, Mutt Shield and Carrier, $5,160.00, ALPHA MEDIA USA LLC, Spring Time Change 2022, $349.00, ALTEC INDUSTRIES INC, Sky Genie - BAG, $170.84, BANNER ASSOCIATES INC, ARPA Project Segment 3 - Design & Bidding, $152,850.00, BIG SIOUX COMMUNITY WATER SYS, February 2023 Fees, $9,727.23, CENTURYLINK QC, Phone Bill, $90.84, CLASSIC CONVENIENCE INC, Fuel - Rural Engine, $169.65, CORE & MAIN GP LLC, PVC, $38.84, EAST RIVER ELECTRIC POWER COOP, February 2023 Transmission Services, $21,770.28, F & M COOP OIL CO, Propane, $52.90, FIRST BANK & TRUST, Heartland February 2023 Services, $411,475.30, FOX PROMO LLC, Embroider - Uniforms, $70.00, GALLS LLC, Trousers/Hemming, $157.04, GANT/BEN, Reimbursement for EMS Refresher, $150.00, GRAHAM TIRE COMPANY, Tires, $2,947.44, HUNTER PUBLISHING INC, March 3 Publication, $8.17, INFOTECH SOLUTIONS LLC, Computer & Software Subscription Fees, $10,984.45, KIMBALL MIDWEST, Hardware, $387.92, KLJ ENGINEERING LLC, MDS Taxilane/Parking/Access Rd - Design & Bidding, $2,919.36, KRUG PRODUCTS INC, Hose, $151.66, LEWIS DRUGS INC, Dog/Cat Food, Litter, Soap, $129.92, MADISON ACE HARDWARE, Hardware, $2.38, MADISON CHIROPRACTIC CENTER, DOT Physical, $100.00, MARTIN/JEREMY, Meal Reimbursement - CDL, $60.00, MINNESOTA MUNICIPAL UTIL ASSN, 1st Qtr - Job Training & Safety Programs, $1,125.00, NORTHWESTERN ENERGY, Fire Station: 2544283-1, $634.34, O REILLY AUTOMOTIVE INC, Filters, $93.44, OFFICE PEEPS INC, Paper Shredder, $247.02, OTTOSON/CURT, Meal Reimbursement - CDL, $60.00, PORTA PROS INC DBA A-1 PORTABLE TOILETS, Toilet Rental - Memorial Park, $170.00, PROSTROLLO AUTO PLAZA CO, Mount/Balance 4 Tires, $100.00, RUNNINGS SUPPLY INC, LED Stand Light Milwakee, $340.38, SD DEPT OF HEALTH, Tattoo Establishment Inspection, $150.00, SD NARCOTICS OFFICERS ASSOC, Membership/Registration Fee, $100.00, STREICHERS INC, Pants, $112.98, STURDEVANTS MADISON INC, Fuel Fleet, $450.49, TEC EQUIPMENT, Rural - Reman Shoe Kits, Brake Drums, $2,210.53, TIMMER SUPPLY CO, Silicone, $16.37, US DEPT OF ENERGY, February 2023 Services, $139,281.50, UTILISMART CORPORATION, AMI SPLIT, $3,893.00.

Bills for Ratification – March 15, 2023
APPEARA, Mat Rentals - City Hall, $361.87, AVERA MEDICAL GROUP, Drug Collection/Testing, $148.00, BAKER & TAYLOR, Book, $36.77, BERGERSEN/CARSTEN, Classes at Community Center 2/12 - 2/25, $160.00, BLACKSTONE PUBLISHING, CD Book, $39.99, BORNS GROUP INC, PRINTING & POSTAGE, $2,621.79, BUTLER MACHINERY CO, Control Board - Generator, $1,664.68, CITY OF BROOKINGS, February Gate Fees, $3,333.16, CLASSIC CONVENIENCE INC, Fuel, $217.00, CORE & MAIN GP LLC, Grinder, $8,169.33, DAKOTA STATE UNIVERSITY, January Work Orders/Supplies, $4,536.31, DESIGNARC GROUP LLC, Water Shop Design Services, $4,435.00, ECONO WASH, Cleaning - Mops & Rags, $67.20, ELITE CARD PAYMENT CENTER, Credit Card Purchases through 2/15/23, $12,425.19, ETTERMAN ENTERPRISES INC, Oil, Hardware, Sealant, $356.82, F & M COOP OIL CO, Fuel, $1,276.61,

FIRST PREMIER BANK, Interest Payment RD Loan - #2802040001, $8,122.51, GALLS LLC, Tactical Combat Shirts/Softshell Jacket, $629.12, GARYS BAKERY, 3 Doz Asst Rolls, $73.45, GEOTEK ENGINEERING & TESTING, Geotechnical Exploration, $4,400.00, GOODWILL OF THE GREAT PLAINS, Shred Service Through 2/28/23, $80.50, GOTH ELECTRIC, After Hours Call, $408.16, GWORKS OR GIS WORKSHOP LLC, Pubworks Subscription, $3,974.00, HACH CO, Sulfuric Acid, $82.28, HAWKINS INC, Chlorine, $272.01, HOLIDAY INN EXPRESS, Lodging - J. Berreth, $487.96, INGRAM CO, Books, $55.49, JOHNSON FEED INC, Road Salt, $2,989.32, JOSH'S TOOLS LLC, Impact Socket, $16.20, JUNIOR LIBRARY GUILD, Books, $6,556.14, KELLER/TRISH, Classes at Community Center 2/20 - 2/27, $39.00, KRUG PRODUCTS INC, Shipping, $420.27, LAKE COUNTY INTERNATIONAL INC, Tractor Valve, $2,341.19, LEWIS DRUGS INC, Gift Basket Snacks, $102.83, LEWIS&CLARK REGIONAL WATER SYS, February Fees, $270.00, MADISON ACE HARDWARE, Wall Texture, Drill Bit, $179.39, MADISON GROCERY STORE INC, ASP Groceries, $413.56, MADISON REGIONAL HEALTH, Drug Screen Collection, $40.00, MARCO TECHNOLOGIES, Lease Agreement #016-1571453-000, $285.47, MARKOS REPAIR, Carb Kit - Pole Saw, $24.66, MERGENT INC, EBSCO Subscription Services, $722.00, MICROMARKETING LLC, Books, $98.08, MPOWER TECHNOLOGIES INC, Circuit Model Sync Annual Maintenance, $1,000.00, NIELSEN/SEAN, Meal Reimbursement, $180.00, NORTHERN TRUCK EQUIPMENT CORP, Bearings, $713.40, NORTHWESTERN ENERGY, Armory 2541047-3, $3,382.55, OCLC INC, Cataloging and Metadata Subscription, $385.48, OFFICE PEEPS INC, Desks, File Cabinets, $1,836.94, OMNI PRO SOFTWARE INC, SCADA Monitor / Controller Upgrade Generator, $14,285.00, OTTOSON/CURT, CDL License Reimbursement, $50.00, PASQ, Strategic Planning/Consulting, $2,853.34, PENGUIN RANDOM HOUSE LLC, Books, $33.75, ROWMAN & LITTLEFIELD, Handbook, $68.23, RUNNINGS SUPPLY INC, Jackets, $655.66, SD GOV'T FINANCE OFFICERS ASSOC, Membership Dues - Sonya Wilt, $40.00, SD ONE CALL, One Call Services, $13.65, SD POLICE CHIEFS ASSOCIATION, Post Form D - Self Score, $334.44, SD WATER AND WASTEWATER ASSOC, Conference Registration - J. Tieman, $120.00, SDN COMMUNICATIONS, Internet - Acct# 031789, $516.79, SHOENROCK PLBG & HTG LLC, Service Call - City Hall Sewer, $80.00, SIOUX VALLEY ENERGY, Utilities - RUS - 122030000, $409.00, STUART IRBY TOOL CO, Inventory / Materials - Fuse Refill, $1,620.00, STURDEVANTS MADISON INC, Turn Signal, $305.48, TALK THE TEE, Flag Football Shirts, $126.00, TIMMER SUPPLY CO, Galv Sheets - Radiator Repair, $49.22, ULINE, Mobile Work Bench, $1,098.82, USA BLUE BOOK, Supplies, $666.90, VALIANT LIVING INC, February Services, $8,853.67, VERIZON WIRELESS, Jan 20 - Feb 19; Acct# 442408979-00001, $108.46, XTREME WASH LLC, Car Washes: Oct 1, 2022 - Feb 28, 2023, $184.04.

Payroll Bills for Ratification – March 17, 2023
ACCOUNTS MANAGEMENT INC, $310.41, HEALTH POOL OF SOUTH DAKOTA, $40,910.64, IRS-EFTPS, $42,533.25, OFFICE-CHILD SUPPORT ENFORCE, $1,814.24, SD RETIREMENT SYSTEM, $22,980.14, SD RETIREMENT SYSTEM, $3,270.00.

Personnel
Bell, Adilynn $11.14/hour; Barry, Cory $23.82/hour; Hein, Eli $15.00

Discussion was held regarding the proposed contract with Banner Associates for Strategic Communications services. Considering possibility for handling some of this work internally before employing Banner Associates. Board took no action at this time.

Property owner and City Engineer shared details pertaining to changes and timelines for this property. Motion by Commissioner Shaw, seconded by Commissioner Dybdahl to Approve Resolution 2023-08 Annexation of The West 208.71 feet of the East 868.29 feet of the South 208.71 feet of the North 325.71 feet of the Northeast Quarter (NE ¼) of Section Eighteen (18), Township One Hundred Six (106) North, Range Fifty Two (52), West of the 5th PM, Lake County, SD. and the right-of-way immediately to the north of and adjacent to said described real estate. Motion carried unanimously.

Motion by Commissioner Corbin, seconded by CommissionerWire to Approve Resolution 2023-10 Support Grant for Fishing Pond Recreation Trail. Motion carried unanimously.

Motion by Commissioner Corbin, seconded by Commissioner Dybdahl to Approve Resolution No. 2023-11 - Amend Employee Compensation 2023 (Section B & C) - CC Positions. Motion carried unanimously.

Motion by Commissioner Dybdahl, seconded by Commissioner Shaw to Approve Resolution No. 2023-12 – Solid Waste Management Program Grant with Amendment to include Site Development. Motion carried unanimously.

Motion by Commissioner Corbin, seconded by Commissioner Shaw to Authorize Mayor to Sign Grant Application FAA – AIP# 3-46-0029-024-2023 and AIG #3-46-0029-025-2023 Reconstruct Hangar Taxilanes, Airport Drive and Parking Lot. Motion carried unanimously.

Motion by Commissioner Shaw, seconded by Commissioner Wire to Authorize Mayor to Sign Professional Services Agreement KLJ – AIP# 3-46-0029-024-2023 and AIG #3-46-0029-025-2023 Reconstruct Hangar Taxilanes, Airport Drive and Parking Lot. Motion carried unanimously.

An update was provided by LAIC and City Administrator on daycare project including the site, conversion of use process with National Parks Service and appraisal process/cost. LAIC committed to pay for the appraisal. Motion by Commissioner Shaw, seconded by Commissioner Wire to Approve contract with Elwood and Martin Appraisals, LLC. Motion carried unanimously.

Police Chief discussed plans and information pertaining to overnight parking restriction on Egan Avenue between 2nd St N and 2nd St S. No action required; per Ordinance, Police Chief and Director of Streets can implement parking restrictions as needed.

Motion by Commissioner Dybdahl, seconded by Commissioner Corbin to Declare Monday, April 10th, 2023, an Employee Holiday. Motion carried unanimously.

Mayor Lindsay announced that no Election will be held April 11, 2023. Next Regular Meeting will be Monday, April 3, 2023.

Motion by Commissioner Wire, seconded by Commissioner Shaw, to Adjourn at 6:17 pm.

/s/Sonya Wilt
Finance Officer

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CITY OF MADISON
BOARD OF EQUALIZATION PROCEEDINGS
MADISON, SD 57042

March 21, 2023
Regular

The Board of Commissioners of the City of Madison met as the Board of Equalization at 5:30pm on the 21st day of March with the following members present on roll call: Mayor Roy Lindsay and Commissioners Jeremiah Corbin, Kelly Dybdahl, Adam Shaw, Jerae Wire, and School Board Member Lori Schultz

Motion by Commissioner Corbin to approve the March 21st agenda, seconded by Commissioner Shaw. Motion carried unanimously.

Appeal 2023.1: Parcel 21045-00300-120-10 John and Joy Martin; Lots 11-12, Block 3, Town Prop 2nd (602 NE 1st St). Property was assessed at $206,000. Property owners were not present.

- After consideration, the Board recommended that the assessed value of the property be left at $206,000. Board approved unanimously.

Appeal 2023.2: Parcel 21420-00100-000-50 Joseph Gitzen and Misty Wells; SE 1/4 Exc E62' Blk 1, North Madison (414 NE 3rd St). Property was assessed at $85,700. Property owners were not present.

- After consideration and review of the history of assessed values and purchase price, the Board recommended that the assessed value of the property be increased to $95,200. Board approved, with exception of Commissioner Dybdahl.

Appeal 2023.3: Parcel 21045-00300-200-20 Richard Yunker; Lots 19-20 Ex N75' Blk 3, Town Prop 2nd (632 NE 1st St). Property was assessed at $181,200. Richard requested that his assessed value be adjusted to $162,22. He stated that property value was higher than market value and that the equalization officer made a mistake due to a building repair permit being added back into the value of the property twice. The permit was for the repair and maintenance of his property and is not something that would add to the value of the property.

- After consideration, the Board recommended that the assessed value of the property be changed to $162,225. Board approved unanimously.

Appeal 2023.4: Parcel 21340-10652-050-20 Jarod Keene; Lot 5B Rittgers Subdivision (1115 N Union). Property was assessed at $381,100. Jarod indicated that the market value of the property is too high – more in the range of $305,500. Jarod requested that the value of the property be reduced to $320,000 due to the assessed value being significantly higher than the 2021 purchase price of the property, which was $260,000.

- After consideration, the Board recommended that the assessed value of the property be changed to $320,000. Board approved unanimously.

Appeal 2023.5: Parcel 21340-10652-050-10 Logan Stratton; Lot 5A Rittgers Subdivision (1111 N Union). Property was assessed at $381,400. Logan indicated that the market value of the property is too high – more in the range of $305,500. Logan requested that the value of the property be reduced to $320,000 due to the assessed value being significantly higher than the 2021 purchase price of the property.

- After consideration, the Board recommended that the assessed value of the property be changed to $320,000. Board approved unanimously.

Appeal 2023.6: Parcel 21976-00200-040-10 Mikael and Amanda Palli; Lot 4, Blk 2, Windsor Est 2nd Addition (1342 NE 4th St). Property was assessed at $379,000. Property owners were not present.

- After consideration, the Board recommended that the assessed value of the property be left at $379,000. Board approved unanimously.

Appeal 2023.7: Parcel 21255-00000-020-20 Kevin and Holly Vohnoutka; Lot 2 Exc W86' S25' & Exc W20', Subdiv Blk BC, Kennedy of Kenn 2nd Ext (609 N Egan). Property assessed at $294,300. Kevin requested that the property value be adjusted to $272,000, which is the appraised value of the property as of April 22 and would be closer to fair market value.

- After consideration, the Board recommended that the assessed value of the property be changed to $280,440. Board approved unanimously.

Appeal 2023.8: Parcel 21110-00100-060-10 Michael and Mandey Kane; Lots 5-6, Blk 1, Smith & Trow (905 N Union). Property was assessed at $571,900. Michael requested that his assessed value be adjusted to $455,000. The property was purchased in July 2021 for $351,000 and the assessed value is $220,000 higher now. Last year the house was assessed at $455,000. Per his insurance, the replacement value of the house $405,000 plus land $50,000 - $455,000 seems fair. He wants an accurate representation of the home.

- After consideration, the Board recommended that the assessed value of the property be changed to $456,000. Board approved unanimously.

Appeal 2023.9: Parcel 21195-03000-000-55 Bruce and Kara Zirpel; S 1/3 E 1/2 Blk 30, Kenn 2nd Ext (124 NE 5th St Unit 3). Property was assessed at $209,500. Bruce stated that they purchased the condo in September 2022 for $180K and that it was assessed at $160,000. $180,000 would be a fair assessment value in his opinion.

- After consideration, the Board recommended that the assessed value of the property be changed to $185,000. Board approved unanimously.

Appeal 2023.10: Parcel 21410-00300-060-10 John Penfold and Sarah Paige; Lots 5-6, Blk 3, Garners 1st (704 N Summit Ave). Property was assessed at $258,200. John contends that the assessment is too high and that the property was appraised at $249,900 in June 2022.

- After consideration, the Board recommended that the assessed value of the property be left at $258,200. Board approved unanimously.

Appeal 2023.11: Parcel 21110-00600-010-10 John and Amy Pies; Lot 1, Blk 6, Smith & Trow (507 NW 3rd St). Property was assessed at $415,400. John indicated that the existing house is a replacement for a prior home that was destroyed by fire. The assessed value in 2022 was $331,300. The current assessment is significantly higher than houses with more square footage. He indicated that a more accurate value would be in the range of $360,000 to $365,000.

- After consideration, the Board recommended that the assessed value of the property be changed to $365,000. Board approved unanimously.

Appeal 2023.12: Parcel 21975-00200-030-10 Dail & Janis Dailing; Lot 3, Blk 2, Windsor Estates 1st Add (1420 NE 4th St). Property was assessed at $287,600. Janis chose not to adjust the assessed value.

- After consideration, the Board left the assessed value of the property at $287,600. Board approved unanimously.

Appeal 2023.13: Parcel 21976-00200-050-10 Dail & Janis Dailing; Lot 5, Blk 2, Windsor Est 2nd Add (No Assigned Address). The property was assessed at $36,000. Janis indicated that the lot was purchased to build a small ranch house, but due to the significant increases in building costs, they have opted not to build. When they purchased the lot, they paid a premium ($27,000). Janis indicated that lots in their area are not selling – one of their neighbors has been attempting to sell one at $30,000 for the last two years. Janis stated that they would not be able to get anything near the $36,000 assessed value, but feels that the $27,000 value that they initially paid would be a fair value.

- After consideration, the Board recommended that the assessed value of the property be changed to $27,000. Board approved unanimously.

Appeal 2023.14: Parcel 21995-00100-110-10 Mathew & Lindsee Planting; Lots 10 & 11, Blk 1, McDonalds 4th Addition (915 Twin Oaks Dr.). Property was assessed at $637,700. The property owners were not present.

- After consideration, the Board recommended that the assessed value of the property be changed to $575,000. Board approved unanimously.

Motion by Commissioner Corbin to review the 2023 Assessment Roll and make changes as recommended, motion seconded by Commissioner Shaw. Motion carried unanimously.

Motion by Commission Shaw to adjourn, seconded by Commissioner Dybdahl. Motion carried unanimously.

The Board of Equalization adjourned at 6:40 pm.

/s/Sonya Wilt
Finance Officer

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CITY OF MADISON
PERSONNEL
April 2023

NAME	EFFECTIVE DATE	PRESENT STATUS	RECOMMENDED STATUS	PRESENT RATE/SALARY	RECOMMENDED RATE/SALARY	POSITION
Lawrence, Christopher	3/28/2023		FT		22.11	Distribution & Collection Operator
Zimmerman, Nathan	4/11/2023		FT		125,507	Utility Director
Williams, Craig	4/9/2023	PT<20	PT<20	25.66	26.43	Police Officer
Krusemark, Kaden	3/12/2023	PT<20	TEMP	13.72	13.72	Lifeguard
Krusemark, Kaden	3/12/2023	PT<20	TEMP	12.01	12.01	Supervisor On Duty
Krusemark, Kaden	3/12/2023	PT<20	TEMP	14.24	14.24	Water Safety Instructor

City of Madison Memorandum
Downtown Overnight Parking Restriction

To: Mayor and City Commission
From: Jameson Berreth, City Administrator
Subject: Implementing overnight parking restriction on Egan Avenue
Date: March 30, 2023

The intent of this memo is to discuss implementation of a permanent overnight parking restriction on Egan Avenue from N 2nd Street to S 2nd Street. The restriction is being considered to maintain the downtown area more efficiently for snow removal, street sweeping, and other necessary activities.

Commission action is not necessary as City Ordinance Section 40-206 authorizes a designee of the City Commission to implement parking restrictions as deemed appropriate. Commission action in 2015 designated the Chief of Police and Director of Streets to have such authority. However, it is the staff's desire to have Commission discussion prior to implementation.

Background

Currently, parking is allowed at any time on all City streets except when the City declares a snow emergency. The core area of downtown is defined in Section 36-206 as the area bound by N 2nd Street and S 2nd Street from Blanche Avenue to Washington Avenue. Efficient street maintenance activities are challenging in this area due to the high density of business and residential activities which leads to consistent parking demand throughout the day and night.

Due to numerous snow events this winter, ice and snow has compiled onto areas of street and sidewalk. City staff regularly receive questions, comments, and concerns from downtown property owners, business owners, and downtown visitors regarding snow removal activities. In response, staff generated a proposal to allow for improved street maintenance.

Proposal

Staff intend to implement an overnight parking restriction on Egan Avenue from N 2nd Street to S 2nd Street between the hours of 2:00 AM and 6:00 AM. This change would be effective April 17th or as soon thereafter as appropriate signage can be placed. It is not proposed at this time to implement any parking restrictions on side streets or other parts of the core downtown area.

Such a parking restriction would allow for efficient street maintenance before the arrival of many vehicles in the area. Improved maintenance includes:

- Improved snow removal from curb to curb
- Improved removal of ice buildup which prevents adequate water drainage
- Improved street sweeping which hinders the sanitation and aesthetics of downtown

Business owners, residents, and visitors to downtown would experience improved traffic for vehicles and pedestrians, increased ease of access for people with disabilities, improved cleanliness, and improved safety from slips or trips on ice or other materials.

Staff will communicate this parking change in advance through advertisements in newspaper, radio, and social media as well as by distributing the attached flyer to downtown businesses, property owners, and tenants as possible.

Staff recommendation: Staff recommendation is to allow staff to implement the parking restriction as discussed.

Proclamation

WHEREAS, America's strongest economic growth in almost 40 years has been driven by the resilience of our small businesses that, despite a worldwide pandemic, continue to pioneer innovative solutions to our country's greatest challenges and create opportunities for families and workers; and

WHEREAS, small businesses remain the heartbeat of our communities and the American economy, employing more than half of our Nation's workers, inventing and innovating to launch new technologies and create new American-led industries, enriching our Main Streets, making parts and products in America to fuel our supply chains, and building our Nation's infrastructure; and

WHEREAS, historic investments made through the President's American Rescue Plan, Infrastructure Investment and Jobs Act, CHIPS and Science Act, and Inflation Reduction Act will ensure small businesses have access to federal capital support, technical assistance, contracting opportunities, and other resources to help lead the way as we rebuild America's roads and bridges and build a clean energy economy for the future; and

WHEREAS, when we support small businesses, jobs are created, and local communities preserve their unique culture; and

WHEREAS, entrepreneurship continues to be one of the best pathways to the American Dream, evidenced by the remarkable small business boom, with more than 10.5 million Americans applying to start a business since January 20, 2021 – more than in any other two-year period in American history; and

WHEREAS, by renewing our commitment to supporting small businesses, we can maintain our global competitiveness and build a stronger Nation where everyone can succeed – from the bottom up and middle out; and

WHEREAS, the President of the United States has proclaimed National Small Business Week every year since 1963 to highlight the programs and services available to entrepreneurs through the U.S. Small Business Administration and other government agencies; and

WHEREAS, Madison, South Dakota supports and joins in this national effort to recognize the contributions of small businesses to the American economy and their importance to ensuring that our local communities remain as vibrant tomorrow as they are today.

NOW, THEREFORE, I, ROY J. LINDSAY JR., MAYOR OF THE CITY OF MADISON, do hereby proclaim April 30 through May 6, 2023, as National Small Business Week.

Dated this 3rd day of April, 2023.

CITY OF MADISON, SOUTH DAKOTA

____
Roy J. Lindsay Jr.
Mayor

Attest: ______________________________
Sonya Wilt
Finance Officer

CONCESSIONS AGREEMENT

CITY OF MADISON

AND

SODEXO AMERICA, LLC

ARTICLE I
INTRODUCTION

1.1 Date of and Parties to Agreement. This Management Agreement ("Agreement"), dated March 29, 2023, is between CITY OF MADISON ("Client"), and SODEXO AMERICA, LLC, a Delaware limited liability company (“Sodexo”). Sodexo and Client shall be known individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1.2 Purpose of Agreement. This Agreement sets forth the terms and conditions upon which Client retains Sodexo to manage and operate the food and beverage concessions ("Concession Service") for the Madison Aquatic Center and other events designated by Client at 1000 NW 1st Street, Madison, South Dakota 57042 ("Premises"). The term "Concession Service" as used in this Agreement describes the right to sell food, beverages, confections, merchandise products and other similar items.

1.3 Term of Agreement. The term of this Agreement is for (3) months, commencing on May 27, 2023 and continuing through August 12, 2023.

Notwithstanding the foregoing, in the event this Agreement expires, and Sodexo continues to provide Services, this Agreement shall be deemed to continue on a month-to-month basis in accordance with the existing terms and conditions as of the expiration date (including any adjustment to fees in accordance with Section 7.2) until terminated by either Party on thirty (30) days' prior written notice.

ARTICLE II
RELATIONSHIP OF THE PARTIES

2.1 Concession Service Exclusive. Client grants Sodexo the exclusive right to operate the Concession Service on or from Client's Premises.

2.2 Independent Contractor. Sodexo shall act as an independent contractor and shall retain complete control over its employees and agents. Any Party engaged by Sodexo to sell specialty items or licensed merchandise pursuant to Section 2.1 shall do so in the capacity of independent contractor.

ARTICLE III
SERVICES TO BE PERFORMED

3.1 Service and Locations. Sodexo shall serve a variety of foods of high quality throughout each event for which it is obligated to manage and operate the Concessions Service and at such times before and after such events as shall be reasonably designated by Client.

3.2 Menu And Prices. Sodexo shall recommend prices to be charged for food and beverages served in the resident dining facilities, and shall prepare menus and establish quantities and portions to be served.

ARTICLE IV
MANAGEMENT AND PERSONNEL

4.1 Sodexo Employees. Sodexo shall provide a sufficient number of qualified management and nonmanagement employees to operate the Concession Service. All personnel employed by Sodexo shall at all times and for all purposes be solely in the employment of Sodexo.

4.2 Sodexo Non-management Employees. All non-management Food Service employees shall be Sodexo employees and shall be compensated directly by Sodexo. Sodexo shall consider Client's employee policies and practices when establishing policies and practices for Sodexo employees. Sodexo shall not, without Client's prior approval, make any substantial change in wages, fringe benefits or working conditions of non-management Food Service employees, unless required by applicable law, regulation, ordinance or court order.

4.3 Payroll Taxes and Costs. The Parties shall prepare and process the payroll for their employees directly and shall withhold and pay all applicable federal and state employment taxes and payroll insurance with respect to its employees, including any income, social security and unemployment taxes and workers' compensation costs. Sodexo and Client shall indemnify, defend and hold each other harmless from and against any claims, liabilities and expenses related to or arising out of the indemnifying Party's responsibilities set forth herein.

4.4 Management Employment Commitment. Client shall not hire, make any agreement with, or permit the employment in any of Client's Concession Service operations, any person who has been a Sodexo management employee at the Concession Service within the earlier of one (1) year after said employee terminates employment with Sodexo or within one (1) year after termination of this Agreement. Client acknowledges that Sodexo employees have acquired special knowledge, information, skills and contacts as a result of being employed with and trained by Sodexo. If Client hires, makes any agreement with or permits employment of any such employee in any Client operation providing Concession Service within the restricted period, it is agreed by Client that Sodexo shall suffer damages and Client shall pay Sodexo as liquidated damages, and not as a penalty, an amount equal to two (2) times the then-current annual salary of each employee hired by Client or the successor contractor. This sum has been determined to be reasonable by both Parties after due consideration of all relevant circumstances. This provision shall survive the termination of the Agreement.

4.5 Equal Opportunity and Affirmative Action Employer. Neither Party shall discriminate because of race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, veteran status, or any other basis protected by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning the Services employees. Each Party affirms that it is an equal opportunity employer. The staffing, promotion, placement or assignment of employees who work on this account must be done without any preference or limitation based on race, color, religion, sex, age, national origin, disability, sexual orientation, ancestry, citizenship, pregnancy, marital status and gender identity, genetic information, veteran status, or any other basis protected by applicable law. This obligation applies to the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning Sodexo's employees. Under no circumstances shall Sodexo permit a request or suggestion by a client to place a particular employee in an account to override Sodexo's non-discrimination policy.

In addition, Sodexo affirms that it is an affirmative action employer. With respect to this Section 4.5, Sodexo shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, Executive Order 11246; Rehabilitation Act of 1973; Vietnam Era Veterans Readjustment Assistance Act of 1974; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act; and any additions or amendments thereto.

ARTICLE V
FACILITIES, MAINTENANCE AND INVENTORIES

5.1 Premises and Equipment. Client shall furnish Sodexo, without charge for the use thereof, Premises and equipment, sufficient to operate the Concession Service.

5.2 Condition of Premises and Equipment. The Premises and equipment provided by Client for the performance of this Agreement shall be in good condition and maintained by Client to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health (including, without limitation, OSHA regulations). Client agrees that any modifications or alterations to the workplace or the Premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of Client and shall be at the Client's expense. This provision shall survive the termination of this Agreement.

5.3 Sanitation. Sodexo shall be responsible for the housekeeping and sanitation inside the concession stands and for sanitation of any condiment stands. Client shall be responsible for cleaning and sanitation of all surrounding areas, for pest control and for refuse removal.

5.4 Maintenance. Client shall furnish the services of its maintenance staff, or shall furnish the use of outside maintenance services, as and when required for proper maintenance and repair of the Premises and equipment provided by Client. Client shall be responsible for and shall pay all costs of maintenance for the Premises and equipment provided by Client, including repair parts, labor and supplies.

5.5 Utilities. Client shall supply and pay the cost of utilities consumed in the operation of the Concession Service.

5.6 Client Obligations. Client shall be responsible to provide Premises and equipment for the Concession Services, including but not limited to, kitchen equipment, suitably furnished office space, fire extinguishing equipment, and a safe for the temporary holding of funds. Client shall also be responsible to provide at the Premises: electricity, gas, water and other utilities, ventilation, security service, telephone service (including installation and local and long distance telephone billings), broadband internet access, pest extermination and control, window cleaning (including power washing as necessary), new equipment, replacement of inoperable or worn equipment, maintenance and repairs, refuse removal, painting and decorating. In addition, Client shall open and maintain internet protocol and port connections necessary to operate time and attendance applications. Client shall also be responsible for payment of real and personal property taxes on all Client's property.

5.7 Inventories of Food and Supplies. Sodexo shall purchase the inventory of food, beverages, goods, merchandise and supplies, the Charges for which shall be charged as Operating Expenses as provided in Section 6.1. Such inventory shall be owned by Client. Sodexo and Client shall jointly inventory all food, beverages and supplies and establish a value based on Client's purchase price so that Sodexo can provide accurate usage figures to Client.

5.8 Inventory of Smallwares and Expendable Equipment. Client and Sodexo shall jointly inventory all Smallwares and Expendable Equipment, if any, owned by Client and shall agree as to required inventory levels. Any inventories below agreed upon levels shall be brought up to such levels at Client's expense. If at any time Sodexo is to provide additional Service(s), Client shall be responsible to increase, at Client's expense, inventories required for the additional Service(s). Client, at Client's expense, shall maintain the required inventory levels providing replacements when needed. All inventories, including replacements, shall be owned by Client.

5.9 Capital Equipment. Client shall provide capital equipment as required for the Services. In the event Client requests Sodexo to purchase equipment on Client's behalf for Client's facility, any equipment purchases made pursuant to this Section shall be billed at the price quoted by Sodexo and paid by Client separate from the financial arrangement detailed in Section 6.1.

ARTICLE VI
FINANCIAL ARRANGEMENTS

6.1 Management of Operation. Commencing May 28, 2023, the following financial arrangement shall be in effect:

A. Sodexo shall collect and account for Gross Sales and pay operating expenses as required (or shall cause its designated third party to do so). Gross sales be deposited with the Client at the City of Madison office. Any Surplus or Deficit shall be for Client's account.

B Operating Expenses shall be defined as all costs, Charges and expenses incurred in connection with the Service including, but not limited to, the following:

1. The invoiced amounts to Sodexo of goods and services, including food, beverages, merchandise, and supplies. Many of the manufacturers, suppliers and distributors provide rebates, allowances, and other payments to Sodexo based on Sodexo's purchasing commitments, aggregate growth incentives and other factors. Prompt payment discounts and all rebates, allowances and other payments obtained from manufacturers, suppliers and distributors, will be retained by Sodexo;

2. Sodexo's labor, including salaries (and bonuses, if any), wages, taxes, health benefits, relocation expenses, payroll processing, retirement plans, and the cost of administering such plans and services;

3. Other costs, Charges and expenses, including, but not limited to, amortization or depreciation of equipment, decor, signage, and other items purchased on behalf of the Services, Charges for workers' compensation and general liability insurance based on the average manual rates for such insurance in the geographic area of the Premises and other

insurance maintained pursuant to the Agreement, training of employees assigned to the Services operation, sales, use, and other taxes related to the Services, and costs of licenses, permits, certifications, marketing and promotional or proprietary materials, third Party recruitment and placement fees, the cost of any required or necessary background checks or drug testing, uniforms and linen, flowers, decorations, overnight delivery, if necessary, minor equipment, repair and maintenance of Sodexo-supplied equipment and other services related to the Service operations.

C. Client shall pay Sodexo a "Management Fee" equal to three percent (3%) of Operating Expenses defined in Section 6.1.B, above

D. Definitions.

1. Accounting Period. A period of a calendar month, twelve (12) of which shall constitute an accounting year.

2. Charge. A fee established by Sodexo for goods or services provided by Sodexo.

3. Deficit. The excess of the total of Operating Expenses and Management Fee over Net Sales.

4. Gross Sales. All sales of food, beverages, goods, merchandise and services in the Food Service, including sales taxes.

5. Surplus. The excess of Net Sales over the total of Operating Expenses and Management Fee.

6.2 Billing.

A. Billing. No later than fifteen (15) days after the end of each Accounting Period, Sodexo shall submit to Client an invoice for Operating Expenses and Management Fee for the applicable period. Payment shall be due within fifteen (15) days after date of invoice. No later than fifteen (15) days after the end of each week Accounting Period, Sodexo shall pay to Client Client's share of Surplus, if any.

B. At the end of each Accounting Period, Sodexo shall invoice Client for all Catering functions and any other non-resident dining program meals and services provided during such period. Payment shall be due within fifteen (15) days after date of invoice.

C. Client agrees that all third Party Catering events shall be administered in accordance with Sodexo's policies for payment and collection. If Client requests that Sodexo deviate from such policies, Client shall be liable to Sodexo for any outstanding receivables related thereto. Client shall pay any such outstanding amounts within fifteen (15) days after date of invoice.

D. All payments shall be made by electronic funds transfer into a bank account designated by Sodexo or as otherwise directed by Sodexo. Client shall pay interest on any unpaid amount not paid when due at the lesser of one and one-half percent (1.5%) per month or the highest interest rate allowed by applicable state law. Upon termination of this Agreement, all outstanding amounts, including all accrued and unpaid interest, shall become immediately due and payable.

F. Sodexo shall have the right to apply all payments made by Client under this Agreement as Sodexo deems appropriate.

Sixty (60) days immediately after the date of invoice, all amounts invoiced shall be considered final and each Party waives its right to contest said invoice and the Concession Services covered by any such invoice.

6.4 Statements And Records. Sodexo shall submit operating statements to Client for each Accounting Period and maintain books and records in accordance with generally accepted accounting principles. The operating statements submitted by Sodexo may reflect certain internal charges and allocations which are applied on a consistent basis to Sodexo accounts. Client, at its expense, reserves the right to audit all operating statements.

ARTICLE VII
FINANCIAL ADJUSTMENTS

7.1 Changes in Policies and Practices. The financial terms set forth in this Agreement and other obligations assumed by Sodexo hereunder are based on conditions in existence on the date Sodexo commences operations, including by way of example, Client's population; labor, food and supply costs; and federal, state and local sales, use and excise tax. In addition, Sodexo has relied on representations regarding existing and future conditions made by Client in connection with the negotiation and execution of this Agreement. In the event of a change in the conditions or the inaccuracy or breach of, or the failure to fulfill, any representation by Client, the financial terms and other obligations assumed by Sodexo shall be renegotiated on a mutually agreeable basis to reflect such change, inaccuracy or breach.

7.2 Adjustments. The financial arrangement will be adjusted to reflect additional costs incurred by Sodexo (i) in connection with the implementation of legislation or other legal requirements, including, but not limited to, the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010, which comprise the health care reform of 2010, or other health care rules and regulations, or any modifications thereto or (ii) increases in benefit costs paid by Sodexo on behalf of covered employees. The adjustment to the financial arrangement will be effective from the date the events of (i) and/or (ii) occur.

ARTICLE VIII
GENERAL TERMS AND CONDITIONS

8.1 Taxes.

A. Sodexo and Client shall each bill and collect sales taxes, if applicable, on all meals and services for which each respectively collects revenue from customers. Sodexo shall bill and collect sales and use taxes, if applicable, on purchases or fees billed to Client. Client shall be responsible for remittance of any taxes collected by Sodexo and given to Client.

B. If additional sales or use or any other transaction related taxes are assessed against the Services operation, Client shall reimburse Sodexo for such assessment and any interest and penalties related to such assessment upon receipt of an invoice from Sodexo; except that Client shall not be responsible for any assessment attributable to Sodexo's negligent failure to timely submit any known tax filing or report. Sodexo shall be responsible for its city, state or federal income taxes including any tax burdens or benefits arising from its operations hereunder. This provision shall survive termination of this Agreement.

8.2 Compliance with Law. Each Party shall comply with all applicable laws, ordinances, rules and regulations relating to Services sanitation, safety and health and, as applicable to a Party, obtain and maintain required licenses and permits as necessary.

8.3 Insurance. The Parties shall maintain insurance as follows:

A. Workers' Compensation Insurance. Each Party shall maintain workers' compensation coverage as required by state law and Employers' Liability in the amount of One Million Dollars ($1,000,000.00) each accident covering all of its employees.

B. Commercial General Liability Insurance. Sodexo shall maintain during the term of this Agreement, Commercial General Liability Insurance with a limit of not less than Five Million Dollars ($5,000,000.00) for each occurrence, including, but not limited to, Personal Injury Liability, Blanket Contractual Liability and Products Liability, covering only the operations and activities of Sodexo under this Agreement and, upon request, shall provide Client with a certificate evidencing such policies. The insurance policies shall contain a provision whereby the insurer(s) shall provide notice of cancellation in accordance with the provisions of the policy. Client shall be named as an additional insured under Sodexo's policies of insurance defined in this Section 8.3.B to the extent Client is indemnified pursuant to Section 8.5. Such additional insured status may be granted by blanket additional insured provision.

D. Property Insurance. Client shall maintain, or cause to be maintained, a system of coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep the buildings, including the Premises, all property contained therein and Client's other property insured against loss or damage by fire, explosion or other cause normally covered by special causes of loss form and builders risk property insurance policies.

8.4 Non-Sodexo Approved Vendors. Client understands that Sodexo has entered into agreements with many vendors, manufacturers and suppliers of products which (i) give Sodexo the right to inspect such vendors', manufacturers' and suppliers' plants and/or storage facilities and (ii) require such vendors, manufacturers and suppliers to adhere to standards to ensure the quality of the products purchased by Sodexo for or on behalf of Client. Client shall not require Sodexo to use products from non-Sodexo approved vendors, manufacturers or suppliers.

8.5 Liability and Indemnity.

A. **Employment Claims.** Each Party hereto shall be solely responsible for all claims asserted by or on behalf of the employees on its respective payroll, including employment and personnel actions (such as wrongful termination, discrimination, etc.) and claims arising out of injuries occurring on the job.

B. **Property Damage Claims.** With respect to claims for damage to the property of the Parties, for which the Parties maintain a system of coverage on their respective property, each Party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other Party hereto and its subsidiaries and affiliates for loss or damage to such Party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in special causes of loss form and builders risk property insurance policies.

C. **Consequential Damages.** In no event shall either Party be liable to the other for consequential, indirect or incidental damages (including punitive damages and lost profits), even if such Party has been advised of the possibility of such damages in advance.

E. **Other Claims for Personal Injury or Property Damage.** With respect to claims for personal injury not covered by sub-Section A and claims for damage to property not covered by sub-Section B, Sodexo and Client shall defend, indemnify and hold each other harmless from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses, attorneys' fees and court costs, which may arise because of the sole negligence or willful misconduct of the indemnifying Party, its agents or employees in the performance of its obligations under this Agreement.

F. This Section 8.5 shall survive termination of this Agreement.

8.6 Trade Secrets and Proprietary Information.

A. During the term of this Agreement, Sodexo may grant to Client a nonexclusive right to access certain proprietary materials of Sodexo, including menus, signage, Services survey forms, software (both owned by and licensed to Sodexo), and similar items regularly used in Sodexo’s business operations (“Proprietary Materials”). In addition, Client may have access to certain non-public information of Sodexo, including, but not limited to, recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in Sodexo's business operations ("Trade Secrets"). Trade Secrets shall not include (i) any information which at the time of disclosure or discovery or thereafter is generally available to and known by the public or the relevant industry (other than as a result of a disclosure directly or indirectly by Client), or (ii) any information which was available to Client on a non-confidential basis from a source other than Sodexo, provided that such source was not bound by an agreement prohibiting the transmission of such information, or (iii) any information independently developed or previously known without reference to any information provided by Sodexo.

B. Client shall not disseminate any Proprietary Materials or disclose any of Sodexo's Trade Secrets, directly or indirectly, during or after the term of this Agreement. Client shall not photocopy or otherwise duplicate any such material without the prior written consent of Sodexo. All Trade Secrets and Proprietary Materials, including signage, service marks and trademarks, shall remain the exclusive property of Sodexo and shall be returned to Sodexo immediately upon termination or expiration of this Agreement.

C. Without limiting the foregoing, Client specifically agrees that all software associated with the operation of the Services, including without limitation, menu systems, food production systems, accounting systems, and other software, is owned by or licensed to Sodexo and not Client. Furthermore, Client's access or use of such software shall not create any right, title interest, or copyright in such software, and Client shall not retain such software beyond the termination of this Agreement. Data processed by the software shall remain the property of Sodexo; however, at Client’s request, upon termination or expiration of this Agreement Sodexo shall provide Client with a copy of the data processed by such software in a format to be mutually agreed upon by the Parties.

D. The provisions set forth in this Section 8.6 shall survive termination or expiration of this Agreement. In the event of any breach of the provisions set forth herein, Sodexo shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.

8.7 Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party, except Sodexo may, without prior approval and without being released from any of its responsibilities, assign this Agreement to any affiliate or wholly-owned subsidiary of Sodexo.

8.8 Attorneys' Fees. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs and related expenses.

8.9 Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other Party as follows:

To Client: City of Madison
Attention: Sonya Wilt
Finance Officer
1000 NW 1st Street,
Madison, South Dakota 57042

To Sodexo: Sodexo America, LLC
Attention: Jim Fjelstul
COO, Universities North America, West
706 River Down Road
Georgetown, Texas 78628

and: Sodexo America, LLC
Attention: Law Department
9801 Washingtonian Boulevard
Gaithersburg, Maryland 20878

and/or to such other persons or places as either of the Parties may hereafter designate in writing. All such notices shall be effective when received. Sent notices shall be considered received forty-eight (48) hours after the same are deposited in the United States mail.

Any request issued by Sodexo to change the Sodexo U.S. mailing address for check payments or to change the Sodexo bank account for U.S. electronic wire or ACH payments will only be communicated in writing by a Sodexo Authorized Officer (Treasurer or Assistant Treasurer). If during the Term of this Agreement, Client receives such a request, prior to taking any action Client shall verify the validity of such request by contacting the Sodexo Accounts Receivable Department directly via one of the methods below.

Email: AccountsReceivable.NorAm@Sodexo.com
Phone: 1-866-372-3160
Fax: 716-568-8408
Website: https://us.sodexo.com/contact.html

8.10 Catastrophe. Neither Sodexo nor Client shall be liable for failure to perform its respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, pandemic, weather and energy related closings, governmental rules or regulations, failure of third Parties to perform their obligations with respect to the Concession Service operation, or like causes beyond the reasonable control of such Party, or for real or personal property destroyed or damaged due to such causes.

Notwithstanding the foregoing, Sodexo shall continue to provide the Concession Services during a catastrophe as described above, as such Services may be modified by mutual agreement of the Parties based on existing conditions or the nature of the catastrophe, and to the extent that the safety and welfare of Sodexo's employees are not jeopardized. Client shall reimburse Sodexo for any Client-approved additional costs, Charges, and expenses incurred by Sodexo in providing the Concession Services, or modified Concession Services, for the duration of the catastrophe, in accordance with the terms of this Agreement.

8.11 Termination Without Cause. Either Party may terminate this Agreement, in whole or in part, by giving at least sixty (60) days' prior written notice to the other Party of the intention to terminate this Agreement.

8.12 Termination For Cause. In the event either Party breaches a material provision hereof ("Cause"), the non-breaching Party shall give the other Party notice of such Cause. In the event the Cause is remedied within sixty (60) days, the notice shall be null and void. If such Cause is not remedied within the specified period, this Agreement shall terminate upon the expiration of such remedy period. In the event that Sodexo is unable to generate an acceptable profit, or in the event of a change in conditions, such inability or change shall constitute Cause and Sodexo may terminate the Agreement upon thirty (30) days' notice. In no event shall the refusal by Sodexo to make any additional Investments constitute Cause for the termination of this Agreement. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either Party at law or in equity.

8.13 Construction and Effect. A waiver of any failure under this Agreement shall neither be construed as nor constitute waiver of any subsequent failure. The Article and Section headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Sections or be considered in their interpretation. Any Exhibits referred to herein are made a part of this Agreement by the respective references to them, provided that in the event of a conflict between the terms of such Exhibit or any other document incorporated herein, and the terms of this Agreement, the terms of the Agreement shall govern.

8.14 Severability. The determination by any court of competent jurisdiction that any provision of this Agreement or the application of any provision of this Agreement is invalid, illegal or unenforceable to any extent shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement so long as the removal or unenforceability of such provision does not materially affect the economic or legal rights, interest or intentions of the Parties. If such removal or unenforceability does materially affect the economic or legal rights, interest or intentions of the Parties, then the Parties shall negotiate in good faith to amend this Agreement so as to maintain the original intent of the Parties as closely as possible. If the Parties are unable to reach agreement within sixty (60) days after the issue is first raised by either Party, then the affected Party (or either Party if both Parties are affected) may terminate this Agreement upon written notice to the other Party.

8.15 Amendments to Agreement. Each of the Articles and any Exhibits shall remain in effect throughout the term of this Agreement unless the Parties agree, in a written document signed by both Parties to amend, add or delete an Article or Exhibit. This Agreement contains all the agreements of the Parties, superseding any prior agreements and writings and may not be changed other than by an agreement in writing signed by the Parties. Email correspondence shall not qualify as a written document signed by an authorized signatory.

8.16 Regulations and Access. Client may make reasonable regulations with regard to the use and occupancy of the Premises, and Sodexo shall comply with them as soon as reasonably possible after written notification. The authorized representatives of Client shall have access to all areas of the Premises at all times. Client grants Sodexo approval to use in performance of its services on the Premises all promotional, informational or marketing activities or materials, including the names, trademarks, logos and symbols of Sodexo in order to provide the customer the complete Sodexo Experience. In addition, with Client's cooperation and approval, Sodexo may create testimonials for marketing purposes confirming Client's endorsement of Sodexo as a management services company focusing on creating quality of life for their clients' employees and customers through a wide range of integrated service. Such testimonials shall not include any confidential data or information of Client.

8.17 Authority. Each individual executing this Agreement, on behalf of or as a representative of a Party, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such Party and that this Agreement is binding upon Client and Sodexo in accordance with its terms.

8.18 Confidentiality. The terms and conditions of this Agreement are confidential. Client and Sodexo represent and warrant to each other that each Party shall maintain the confidentiality of the terms and conditions of this Agreement, however, such restriction shall not prohibit either Party from disclosing the existence of the relationship, term of this Agreement or the projected sales volume related to the terms of this Agreement.

8.19 Electronic Signatures. The Parties agree that this Agreement and subsequent Amendments may be executed using electronic contracting technology using symbols or other data in digital form and agree that such electronic signature is the legal equivalent of a manual signature binding the Parties to the terms and conditions stated herein.

IN WITNESS WHEREOF, the duly authorized officers of the Parties have executed this Agreement as of the date indicated in the first paragraph of this Agreement.

CITY OF MADISON

By: ___________________________
Roy Lindsay
Mayor

SODEXO AMERICA, LLC

By: ______________________________
Dannie Crozier
Senior Vice President, Operations

CITY OF MADISON FACILITY USE AGREEMENT
FLYNN FIELD BASEBALL DIAMOND AND THUE SOFTBALL FIELD
WITH
STATE OF SOUTH DAKOTA/ DAKOTA STATE UNIVERSITY

Facility Name(s): Flynn Field and Thue Field	User's Name: Dakota State University
Owners: City of Madison	DSU Department: Athletics
Owner's Address:	User's Address:
116 W Center St	820 N. Washington Ave
Madison, SD 57042	Madison, SD 57042
Referred to as: Owner or City	Referred to as: User or DSU

City of Madison herby enters into this facility use agreement with DSU in consideration and pursuant to the terms and conditions set forth herein and will be effective from the date this agreement is signed by both parties. This agreement will be subject to review on an annual basis, with an understanding that both parties have an interest to establish a long and beneficial relationship, between Dakota State University Athletics Department and the City of Madison.

1. Owner will allow User the use of the City of Madison Flynn Field and Thue Field for Varsity Sports pre/post season workouts, practices, games, and special circumstances. User will have access from the first day of classes in the fall until post-season play concludes in the spring.
2. User practices may not exceed four days per week. The City may increase or decrease this threshold depending on field condition at the sole discretion of the Parks Superintendent.
3. The User will also let other baseball games (High School Baseball), softball games and special events (regions or playoff games) to be held on Flynn/Thue if user doesn't have a game scheduled. Owner will work with User to accommodate practice time is available for User.
4. User will move players to avoid damage of outfield grass during practice.
5. User will be responsible for all snow removal on Flynn and Thue Field; if available the owner will assist with removing snow off Flynn and Thue Field. Owner will provide guidelines for snow removal.
6. The owner will maintain the Flynn and Thue Field on a 12-month basis in regard to mowing; the City of Madison Parks superintendent reserves the right to set grass height, to what best serves the quality/preservation of grass.
7. During the time of September through May the User will help in keeping the Flynn and Thue Field clean by collecting all litter, garbage, trash, etc. On the field, in its bleachers dugouts and placing the garbage in the provided cans, provided by the owner. The owner will empty all containers on a weekly basis or daily basis if a tournament is being held during the week.
8. The User will be permitted to sell concessions during DSU baseball/softball games utilizing Flynn or Thue Field concession stand. The User must complete the concession stand agreement form. Owner will provide utilities for concession stand.

9. The User will have control over proceeds from admissions gate during the DSU baseball/softball games.
10. User will provide portable toilets near the Flynn and/or Thue Field Restrooms, until such time that the Owner deems it advisable to open the public restrooms.
11. User will close and lock the concession stands and restrooms unless authorized otherwise by the City of Madison Parks Supervisor.
12. User will have access to scoreboards, which are owned by DSU, and control panels until the completion of the last home game of the season. User will store the control panels in their respective storage locations. Owner will have access to scoreboards during the user's offseason. User will be responsible for any repairs to scoreboard anytime of the year.
13. User will be having access to lights (as needed) i.e.: Extra Innings games, game times that have a late start, evening practices, or "dark" days.
14. User shall shut off all scoreboard breaker switches and light breaker switches after their use and before leaving the facility.
15. User will chalk/paint foul lines as needed; User will provide their own chalk, paint, and field dry.
16. User will provide and have present appropriate supervision at Flynn and Thue Field for all pre/post season workouts, practices, games, and special events held by the User. The need for supervision of individual workouts such as utilizing batting cages, is to be determined by User.
17. User's applications of field chemicals or soil amendments must be documented, scheduled, and communicated to the City Park Supervisor, in advance of said application, with the exception of Turface Quick Dry to dry wet spots in an effort to make the field playable on game days.
18. In the case of water restrictions set by the City Of Madison, watering of the fields will be based upon said restrictions. Current sprinkler system usage: Baseball- Odd Days, Softball-even days, and pre/post practices and games.
19. When undesirable or questionable field conditions arise, a collective decision between the DSU Athletics Director, Baseball/Softball Coaches, Game Administrators, and umpires, and if needed the City of Madison Parks Supervisor will be made when deciding if the fields are playable. Owner shall have ultimate authority.
20. The Owner will provide financial and physical assistance to restore and/or repair diamond structures that develop damage due to routine normal usage, acts of God, or need regularly scheduled maintenance.
21. The User shall repair or replace any equipment, fixtures, or field damage which might be destroyed by undue care or negligence while the User is utilizing the Owner's Property.
22. User will store all training equipment/practice equipment during off season in the User's private shed; all equipment needs to be stored in proper location one week after last practice/home game upon the completion of the User's season.
23. User will pay $7,500.00 a year to utilize Flynn Field to offset costs of field usage wear and tear. These funds will also help do improvements and repairs to Flynn Field. Payment will be made in

two installments: $3,750 paid on or before March 30th for use during the spring, and $3,750 paid on or before September 30th for use during the fall. Extra maintenance that is mutually agreed upon, including by not limited to overseeding, shall be split equally (50/50) between DSU and the City.

24. The State of South Dakota/ Dakota State University does not have the legal authority to indemnify and hold harmless the City of Madison. That State of South Dakota/Dakota State University will be responsible for errors, omissions, and negligence of its employees, officers, and agents to the extent provided by law.

City of Madison	**DSU Athletics Director**	**DSU Authorized Official**
By:	By:	By:
Title:	Title:	Title:
Date:	Date:	Date:

March 27, 2023

City of Madison
Attn: Jameson Barreth
116 West Center Street
Madison, SD 57042

RE: **Recommendation of Award of Contract**
Electric Distribution Improvements - 2023
City Bid Number 921
DGR Project No. 415933

Dear Mr Berreth:

We have reviewed the bids received on March 22, 2023 for the above-referenced project. A bid summary form and detailed tabulation of the bid results is enclosed. We have checked the bids for mathematical accuracy and compliance with the bid specifications. We are hereby prepared to offer the following recommendation.

There were three (3) responsive bids received ranging in price from $504,457.31 to $871,531.81. The apparent low bid evaluated was from Dakota Directional LLC, who submitted a bid price of $504,457.31. Dakota Directional has successfully completed similar projects for us in the past, and we know of no reasons why they would not perform well on this project. We therefore recommend that you award the contract to Dakota Directional for a total price of $504,457.31.

Our estimate for this contract was $540,000, and as a result of the bid prices received, the project is within the overall budget. Please review our recommendation and feel free to contact us with any questions you or the Commission may have. Once an award has been made, we will proceed with preparing the Contract Documents for signatures. We will be sending a copy of the bid summary to all bidders and plan holders.

Best Regards,

DGR Engineering

Chad Rasmussen

Chad Rasmussen, P.E.
Enclosure: Bid Summary and Tabulation
CAR:ste

BID SUMMARY

Electric Distribution Conversion - 2023

City of Madison, South Dakota

Bid Number 921

DGR ENGINEERING

DGR Project No. 415933
Bid Letting: March 22, 2023 - 2:00 PM
City of Madison

Bidder and Address	Bid Security	Total Bid	Comments
Dakota Directional LLC 206 E 13th Avenue Redfield, SD 57469	10% Bid Bond	**$504,457.31**	
Karian Peterson Power Line Contracting LLC 4437 Hwy 212, PO Box 345 Montevideo, MN 56265	10% Bid Bond	$674,016.81	
Builders Electric 47174 258th Street Sioux Falls, SD 57107	10% Bid Bond	$871,531.81	

BID TABULATION
Electric Distribution Conversion - 2023
City of Madison, South Dakota
DGR Project No. 415933
Bid Letting: March 22, 2023 - 2:00 PM

DGR ENGINEERING

Unit No.	Name and Description of Construction Unit	No. of Units	Dakota Directional LLC Labor	Material	L & M	Ext. Price L & M	Karian Peterson Power Line Contracting LLC Labor	Material	L & M	Ext. Price L & M
UD-1/0	Primary cable, 15 kV, 1/0 Sol. Al. (Mft.)	9.320	$1,000.00		$1,000.00	$9,320.00	$1,750.00		$1,750.00	$16,310.00
UD-4/0	Primary cable, 15 kV, 4/0 Str. Al. (Mft.)	3.810	1,500.00		1,500.00	5,715.00	2,500.00		2,500.00	9,525.00
UD-500	Primary cable, 15 kV, 500 MCM Str. Al. (Mft.)	47.550	2,000.00		2,000.00	95,100.00	2,250.00		2,250.00	106,987.50
UD-10-2 UF	Secondary cable, 600 V, 10-2 UF, Cu. w/ground (Mft.)	2.220	1,000.00		1,000.00	2,220.00	6,750.00		6,750.00	14,985.00
UD-4/0 TPLX	Secondary cable, 600 V, 2-#4/0, 1-#2/0 Str. Al. (Mft.)	0.520	2,000.00		2,000.00	1,040.00	10,000.00		10,000.00	5,200.00
UG-BP	1Ø transformer box pad (ea.)	1	500.00		500.00	500.00	400.00		400.00	400.00
UM33-60GS	3Ø sectionalizing enclosure ground sleeve (ea.)	4	1,000.00		1,000.00	4,000.00	550.00		550.00	2,200.00
UPS-BP	Padmount switch box pad (ea.)	3	1,500.00		1,500.00	4,500.00	600.00		600.00	1,800.00
UK5	1Ø secondary pedestal (ea.)	2	300.00		300.00	600.00	225.00		225.00	450.00
UM33-PB ( )	Pull box, 36"H x 48"W x 72"L (ea.)	6	1,500.00		1,500.00	9,000.00	600.00		600.00	3,600.00
UR3-(42)	Trenching-special backfill, 42" Deep (Mft.)	0.050	30,000.00		30,000.00	1,500.00	25,000.00	2,000.00	27,000.00	1,350.00
UR3R-(42)	Trenching-rock, shale or limestone, 42" deep (Mft.)	0.050	60,000.00		60,000.00	3,000.00	30,000.00		30,000.00	1,500.00
UR5-(3)3P	Bore with Owner-furnished conduit, (3)3" (Mft.)	0.050	20,000.00		20,000.00	1,000.00	30,000.00		30,000.00	1,500.00
UR5-(6)3P	Bore with Owner-furnished conduit, (6)3" (Mft.)	4.320	26,000.00		26,000.00	112,320.00	32,000.00		32,000.00	138,240.00
UR5-(1)5P	Bore with Contractor-furnished conduit, (1)5" (Mft.)	0.500	20,000.00	10,826.00	30,826.00	15,413.00	40,000.00		40,000.00	20,000.00
UR6-(24)	Bore without conduit, 24" deep (Mft.)	0.420	8,000.00		8,000.00	3,360.00	15,000.00		15,000.00	6,300.00
UR6-(42)	Bore without conduit, 42" deep (Mft.)	11.230	15,000.00		15,000.00	168,450.00	18,500.00		18,500.00	207,755.00
UR9-S	Shallow crossing (Mft.)	0.050	30,000.00		30,000.00	1,500.00	20,000.00		20,000.00	1,000.00
UR-LDS	Lawn damage seeding (Mft.)	0.510	1,500.00	1,500.00	3,000.00	1,530.00	2,000.00	500.00	2,500.00	1,275.00
UR-PIT	Splice/Grounding connection pit (ea.)	5	500.00		500.00	2,500.00	400.00		400.00	2,000.00
ASP-REM	Asphalt pavement removal (sq. yd.)	10.0	200.00		200.00	2,000.00	1,200.00		1,200.00	12,000.00
ASP-REPL	Asphalt replacement (ton)	5.0	200.00	200.00	400.00	2,000.00	7,500.00	1,800.00	9,300.00	46,500.00
PCC-REM	Concrete pavement removal (sq. yd.)	10.0	300.00		300.00	3,000.00	1,000.00		1,000.00	10,000.00
PCC-REPL	Portland cement concrete replacement (cu. yd.)	5.0	300.00	200.00	500.00	2,500.00	800.00	350.00	1,150.00	5,750.00
MOB	Mobilization (as req'd)	1	10,000.00		10,000.00	10,000.00	15,000.00		15,000.00	15,000.00
T1	Taxes on Owner-furnished Materials (as req'd.)	1				42,389.31				42,389.31
					TOTAL BASE BID	**$504,457.31**			**TOTAL BASE BID**	**$674,016.81**

BID TABULATION
Electric Distribution Conversion - 2023
City of Madison, South Dakota
DGR Project No. 415933
Bid Letting: March 22, 2023 - 2:00 PM

DGR ENGINEERING

			Builders Electric			
Unit No.	Name and Description of Construction Unit	No. of Units	Labor	Material	L & M	Ext. Price L & M
UD-1/0	Primary cable, 15 kV, 1/0 Sol. Al. (Mft.)	9.320	$2,750.00		$2,750.00	$25,630.00
UD-4/0	Primary cable, 15 kV, 4/0 Str. Al. (Mft.)	3.810	3,250.00		3,250.00	12,382.50
UD-500	Primary cable, 15 kV, 500 MCM Str. Al. (Mft.)	47.550	3,500.00		3,500.00	166,425.00
UD-10-2 UF	Secondary cable, 600 V, 10-2 UF, Cu. w/ground (Mft.)	2.220	2,500.00		2,500.00	5,550.00
UD-4/0 TPLX	Secondary cable, 600 V, 2-#4/0, 1-#2/0 Str. Al. (Mft.)	0.520	2,500.00		2,500.00	1,300.00
UG-BP	1Ø transformer box pad (ea.)	1	650.00		650.00	650.00
UM33-60GS	3Ø sectionalizing enclosure ground sleeve (ea.)	4	750.00		750.00	3,000.00
UPS-BP	Padmount switch box pad (ea.)	3	950.00		950.00	2,850.00
UK5	1Ø secondary pedestal (ea.)	2	300.00		300.00	600.00
UM33-PB ( )	Pull box, 36"H x 48"W x 72"L (ea.)	6	2,750.00		2,750.00	16,500.00
UR3-(42)	Trenching-special backfill, 42" Deep (Mft.)	0.050	2,000.00		2,000.00	100.00
UR3R-(42)	Trenching-rock, shale or limestone, 42" deep (Mft.)	0.050	7,500.00		7,500.00	375.00
UR5-(3)3P	Bore with Owner-furnished conduit, (3)3" (Mft.)	0.050	39,000.00		39,000.00	1,950.00
UR5-(6)3P	Bore with Owner-furnished conduit, (6)3" (Mft.)	4.320	58,000.00		58,000.00	250,560.00
UR5-(1)5P	Bore with Contractor-furnished conduit, (1)5" (Mft.)	0.500	28,000.00	22,000.00	50,000.00	25,000.00
UR6-(24)	Bore without conduit, 24" deep (Mft.)	0.420	14,000.00		14,000.00	5,880.00
UR6-(42)	Bore without conduit, 42" deep (Mft.)	11.230	18,000.00		18,000.00	202,140.00
UR9-S	Shallow crossing (Mft.)	0.050	60,000.00	10,000.00	70,000.00	3,500.00
UR-LDS	Lawn damage seeding (Mft.)	0.510	15,000.00		15,000.00	7,650.00
UR-PIT	Splice/Grounding connection pit (ea.)	5	650.00		650.00	3,250.00
ASP-REM	Asphalt pavement removal (sq. yd.)	10.0	225.00		225.00	2,250.00
ASP-REPL	Asphalt replacement (ton)	5.0	180.00	30.00	210.00	1,050.00
PCC-REM	Concrete pavement removal (sq. yd.)	10.0	280.00		280.00	2,800.00
PCC-REPL	Portland cement concrete replacement (cu. yd.)	5.0	500.00	50.00	550.00	2,750.00
MOB	Mobilization (as req'd)	1	85,000.00		85,000.00	85,000.00
T1	Taxes on Owner-furnished Materials (as req'd.)	1				42,389.31
					TOTAL BASE BID	**$871,531.81**