



BOARD OF COMMISSIONERS AGENDA
Monday, July 10, 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/88527129559>

CALL TO ORDER

Meeting ID: 885 2712 9559

PLEDGE OF ALLEGIANCE

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

ROLL CALL

ADOPT AGENDA

APPEARANCES/ACKNOWLEDGEMENTS

CONSENT CALENDAR

- 1) Minutes – June 20, 2023
- 2) Bills for Approval – July 11-12, 2023
- 3) Bills for Ratification – June 22 - July 5, 2023
- 4) Payroll Bills for Ratification – June 23, 2023
- 5) Personnel
- 6) 2023 - 2024 Retail (on-off sale) Malt Beverage & SD Farm Wine License Renewal
- 7) May Building Permit Report

UNFINISHED BUSINESS

NEW BUSINESS

- 1) Award Bid No. 924 – Furnishing Power Transformer – Green Substation to Pennsylvania Transformer Technology, Inc. (PTTI)
- 2) Approve Purchase of Land for New RUS
- 3) Approve Name Change on TIF #3 Developer Agreement from PP6 to HME Companies, LLC
- 4) Acknowledge Assignment and Assumption Agreement between HME Companies, LLC and Rural Electric Economic Development (REED)
- 5) Approve and Authorize Mayor to Sign Tax Increment District Number Five Developer Agreement with Trojan Village, LLC
- 6) Approve and Authorize Mayor to Sign Change Order No. 6 – NW 9th St/Union Ave Reconstruction
- 7) Approve Contract with GeoTek for Construction Materials Testing Services – City Administration Building
- 8) Discussion on Construction of City Administration Building
- 9) Update on 2023 Infrastructure Improvement Projects

PUBLIC COMMENT

ANNOUNCEMENTS

- 1) Next Regular Commission Meeting – Monday, July 24 at 5:30pm

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**

June 20, 2023
Regular

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

The Pledge of Allegiance was recited.

Motion by Commissioner Shaw, seconded by Commissioner Wire to adopt the amended June 20, 2023 agenda, removing Item #5 Personnel from the Consent Calendar and moving New Business Item Number 3 to New Business Item 1. Motion carried unanimously.

Motion by Commissioner Shaw, seconded by Commissioner Dybdahl, to approve the following items on the consent calendar: Minutes June 5, 2023, Bills for Approval – June 21, 2023, Bills for Ratification – June 8-June 15, 2023, Payroll Bills for Ratification – June 9, 2023, Adopt Resolution No. 2023-17 – Approve a Plat – Lots 8-9, Block 8, Lakeview Industrial Park Addition. Motion carried unanimously.

Bills for Approval – June 21, 2023

A & B PEST CONTROL, Insect Control, \$47.93, A A A COLLECTIONS INC, Collection Services - May 2023, \$454.93, ALPHA MEDIA USA LLC, Community Center Annual, \$388.00, AMERT CONSTRUCTION CO, Crane Usage- Manitou Transformer, \$698.70, APPEARA, Mat Rentals - City Hall, \$79.53, BARGER ELECTRIC LLC, Pool Heater Repairs, \$79.00, BIG SIOUX COMMUNITY WATER SYS, Bulk Water, \$9,878.47, BORDER STATES ELECTRIC SUPPLY, Spiking Tool, \$283.55, BUFFALO RIDGE CONCRETE INC, Concrete, \$1,257.00, BUILDERS FIRSTSOURCE, Lumber, \$42.24, BUTLER MACHINERY CO, Engine #5 - 2023 RFP Improvements, \$2,739.30, C&R FIRE SUPPRESSION DBA DVL FIRE AND SAFETY, Recharge Fire Extinguishers, \$65.00, CALDWELL TANKS, Water Tower Construction - Pymt #8, \$118,612.40, CENTURYLINK QC, Phone Bill, \$90.84, CITY OF BROOKINGS, May Gate Fees, \$4,833.68, CLASSIC CONVENIENCE INC, Fuel - Rural Fire Truck, \$60.43, COLUMN SOFTWARE PBC, C-111 Advertisement Segment 3, \$382.19, EAST RIVER ELECTRIC POWER COOP, Monthly Transmission Services, \$20,161.20, F & M COOP OIL CO, Tire, \$378.45, FIRST BANK & TRUST - HEARTLAND ENERGY, Heartland Energy - May 2023 Services, \$376,470.50, FOX PROMO LLC, Sew on Patches, \$36.00, HAWKINS INC, Chemicals, \$1,438.14, HEIMAN INC, Pressure Washer, \$7,097.45, INFOTECH SOLUTIONS LLC, Computer & Software Subscription Fees, \$5,191.00, JOSH'S TOOLS LLC, Tools, \$41.26, LAKE COUNTY INTERNATIONAL INC, Sleeve, \$29.37, LAKE COUNTY TREASURER, 2022 Property Tax - Parcel# 21045-00300-16010, \$734.91, LEWIS DRUGS INC, Kleenex/Napkins, \$18.07, MADISON ACE HARDWARE, Tools, \$68.95, MADISON CHIROPRACTIC CENTER, DOT Physical, \$100.00, MADISON GROCERY STORE INC, Water, \$628.96, MADISON LAWN CARE INC, Custom Lawn Mowing - May, \$231.55, MALLOY ELECTRIC, Freight, \$352.25, MARTIN/JEREMY, CDL Testing, \$110.00, MICHAELS FENCE & SUPPLY, Fence, \$2,576.38, MIDWEST TURF & IRRIGATION, Ignition Switch, Blades, \$351.87, NORTHWESTERN ENERGY, Fire Station 2544283-1, \$15.67, O REILLY AUTOMOTIVE INC, Scratch-Fix, \$38.86, OFFICE PEEPS INC, Janitorial Supplies, \$547.86, OLSON/KRISTIN, Mileage - HR School - Pierre, \$252.70, PROSTROLLO AUTO PLAZA CO, Mount/Balance Tires, \$105.00, RUNNINGS SUPPLY INC, Horse Mats, \$1,532.94, SANITATION PRODUCTS INC, Wire, \$1,335.00, SODEXO INC & AFFILIATES, Pool Concessions Week 1, \$6,752.00, STREICHERS INC, Uniforms, \$803.88, STUART IRBY TOOL CO, [E-TE100] Protective Caps, \$1,032.00, STURDEVANTS MADISON INC, Battery, \$242.43, SWEETMAN CONSTRUCTION CO DBA KNIFE RIVER, Asphalt, \$949.90, TIMMER SUPPLY CO, Gen Plant Materials, \$128.92, TYLER TECHNOLOGIES INC, Barcode Readers, \$134.75, US DEPT OF ENERGY, Monthly WAPA Bill, \$131,998.00, WESCO DISTRIBUTION INC, E-G1440 - Parking Stand Arrestor, \$5,378.60, WHEELCO BRAKE & SUPPLY INC, Bellows Air Spring, \$674.40, WILT/SONYA, Mileage - FO School - Pierre, \$231.87.

Bills for Ratification – June 8 - June 15, 2023

APPEARA, Entry Mats - Plants, \$378.33, AT & T MOBILITY, Police Phones & Tablets, \$280.28, BERRY FAST BICYCLES LLC, Bikes for Madison Community Center, \$1,269.96, BORNS GROUP INC, PRINTING & POSTAGE, \$1,265.19, BOWES CONSTRUCTION, Tack Oil, \$700.00, BUFFALO RIDGE CONCRETE INC, Concrete WMB, \$368.00,

BUILDERS FIRSTSOURCE, Lumber, \$73.32, CARDIO PARTNERS INC, AED'S, \$5,569.41, CARQUEST OF MADISON, Grease, \$92.90, CHRISTIANSEN COMPLETE WATER, Water/Cooler Rental, \$22.00, CLASSIC CONVENIENCE INC, Fuel, \$544.61, COLES PETROLEUM PRODUCTS INC, 4/28/23 to 5/24/23 Fuel Report, \$5,538.74, CORE & MAIN GP LLC, Brass Companion Flange, \$682.44, DAKOTA STATE UNIVERSITY, April Utilities, \$8,025.64, F & M COOP OIL CO, Tires, \$1,492.50, FASTENAL CO, Anchors, \$23.82, FAWBUSH/GARY, Materials for Library Loft Project, \$1,900.00, FIRST PREMIER BANK, Interest Pymt on RD Loan - Acct# 2802040001, \$8,992.78, GRAHAM TIRE COMPANY, Tires, \$238.00, GULLICKSON/MARTY, Meter Reimbursement, \$798.76, HANCO CORPORATION, Hardware, \$119.80, HASLETON/JARED, Classes at Community Center 3/27 - 4/8, \$343.00, HAWKINS INC, Chemicals, \$4,360.70, HEIMAN INC, Carabiner for Harnesses, \$69.90, HUNTER PUBLISHING INC, Display Ad - Library, \$153.09, INTERLAKES COMM ACTION INC, 60's Plus Dining - 2024, \$2,750.00, J H LARSON ELECTRICAL CO, Madison Aquatic Center - Pool Lights, \$9,425.00, JIM HAWK TRUCK TRAILERS - SIOUX FALLS, Drive Seal, \$210.68, LAKE COUNTY REGISTER OF DEEDS, DSU Foundation Easement, \$30.00, LAKE COUNTY TREASURER, 4/28/23 to 5/24/23 Fuel Report, \$138.11, LEWIS DRUGS INC, Flowers, \$122.38, LEWIS&CLARK REGIONAL WATER SYS, May Fees, \$270.00, MADISON ACE HARDWARE, Rubber Mats, \$162.24, MADISON GROCERY STORE INC, Water, \$17.96, MADISON TIRES INC, Tire Repair #64, \$476.78, MARTIN/JEREMY, Driver's License Renewal, \$35.00, MICHAEL JOHNSON CONSTRUCTION, Sand, \$364.38, MUSTANG SEEDS INC, Grass Seed, \$170.00, NORTHWESTERN ENERGY, Pool 2543114-9 - Opening Bill, \$831.63, O REILLY AUTOMOTIVE INC, Air Filter - WA10805, \$421.78, OFFICE PEEPS INC, Garbage Liners/Paper Towels, \$205.44, OPEN ACCESS TECHNOLOGY INT'L, AMI Dues and Subscriptions, \$8,500.00, PHEASANTLAND INDUSTRIES, Uniforms, \$372.05, PORTA PROS INC DBA A-1 PORTABLE TOILETS, Toilet Rental - Memorial Park, \$170.00, RASMUSSEN/AUTUMN, P90X Classes, \$43.00, RIGGIN FLIGHT SERVICE, Reimburse Purchase - Halogen Sockets, \$95.58, RUNNINGS SUPPLY INC, Cleaner, \$443.73, SANITATION PRODUCTS INC, 65 Gallon Carts, \$864.01, SD ONE CALL, One Call Services, \$183.75, SHPIGLER CONSULTING INC, AMI - Professional Services, \$6,000.00, SIOUX VALLEY ENERGY, Utilities - RUS - 122030000, \$62.00, TIMMER SUPPLY CO, Parts, \$347.85, USA BLUE BOOK, Chemicals, \$398.21, VALIANT LIVING INC, Contracted Expenses, \$8,853.67, VERIZON WIRELESS, Apr 20 - May 19 Acct# 442408979-00001, \$108.38, WEIST/SHERRY, Water Aerobics - May, \$905.36, WHEALY/MARK, Spin Classes 5/31 - 6/2, \$112.00, WHEELCO BRAKE & SUPPLY INC, Parts, \$102.10.

Payroll Bills for Ratification – June 9, 2023

ACCOUNTS MANAGEMENT INC, \$310.41, AFLAC, \$4,409.31, DELTA DENTAL, \$6,572.00, HEALTH POOL OF SOUTH DAKOTA, \$41,506.97, IRS-EFTPS, \$45,671.31, LOCAL UNION #426, IBEW, \$463.00, OFFICE-CHILD SUPPORT ENFORCE, \$1,463.50, SD RETIREMENT SYSTEM, \$24,121.54, SD RETIREMENT SYSTEM, \$3,384.00, TEAMSTERS LOCAL NO 120, \$727.00.

Motion by Commissioner Shaw, Seconded by Commissioner Dybdahl to Approve 2026 City of Madison Strategic Plan. Motion carried unanimously. Eric Muckey and Jessica Myers from PASQ provided a recap of the plan, which includes key principles, strategies, goals, vision statement, and other details.

Motion by Commissioner Dybdahl, Seconded by Commissioner Shaw to Approve Second Reading of Ordinance No. 1658 – Amend Snow Removal Ordinances. Motion carried unanimously.

Motion by Commissioner Shaw, Seconded by Commissioner Wire to Authorize Mayor to sign Memorandum of Understanding with Lake County. Motion carried unanimously. City Administrator Berreth and a representative of the county shared that the MOU pertains to the bypass (approximately 2-mile stretch of road from Pizza Ranch to Prostrollo Motors) and NE 3rd Steet (along airport). The City would work in cooperation with the County to improve the roads and then transfer ownership to the County. Anticipated funding would be via a grant, if awarded.

Motion by Commissioner Shaw, Seconded by Commissioner Wire to Award Bid No. 925 – City Administration Building to Journey Group. Motion carried unanimously. City Administrator Berreth, RSA Architect Justin Olson, and John Reisel from Journey Group discussed information surrounding the bid including the bid alternate, which provided an option to remove the brick finish from the wall panels if the bid was higher than anticipated or the brick finish would extend project completion date. The bid was accepted without utilizing the Bid Alternate.

Motion by Commissioner Wire, Seconded by Commissioner Dybdahl to Award Bid No. 926 – Water System Improvements – Segment 3 to Prunty Construction Company. Motion carried unanimously.

Motion by Commissioner Dybdahl, Seconded by Commissioner Shaw to Authorize staff to advertise Bid No. 930 – NE 3rd Street Mill and Overlay Project 2023-2. Motion carried unanimously. This relates to the earlier Memorandum of Understanding with Lake County.

Motion by Commissioner Shaw, Seconded by Commissioner Wire Authorize Mayor to sign EDA Public Works and Economic Adjustment Assistance Program South Industry Ave Grant Application for Industrial Park. Motion carried unanimously. City Administrator Berreth shared that the LAIC has identified a grant to help construct a new street in the industrial park. Brooke Rollag from LAIC also provided details surrounding the project and the proposed grant.

Motion by Commissioner Dybdahl, Seconded by Commissioner Shaw to Approve Change Order No. 1 – Public Waterworks Renovation. Motion carried unanimously.

Motion by Commissioner Dybdahl, Seconded by Commissioner Wire to Approve Cyber Estates Park Development Plan. Motion carried unanimously. City Administrator Berreth shared that the City and LAIC are continuing the conversion of use process to move the grant encumbrance from the t-ball field to the proposed Cyber Estates Park and that a development plan is a requirement of this process.

Motion by Commissioner Shaw, Seconded by Commissioner Dybdahl to move the July Commission Meetings to the 2nd and 4th Mondays, which are July 10th and July 24th. Motion carried unanimously.

Mayor Lindsay announced the following:

- Next Regular Commission Meeting: Due to the holiday and per the earlier motion, the next meeting will be held **Monday, July 10th at 5:30 pm** (not July 3rd).

Motion by Commissioner Shaw, seconded by Commissioner Wire to Adjourn at 6:32 pm. Motion carried unanimously.

/s/Sonya Wilt

Finance Officer

Published once at the approximate cost of \$__.

CITY OF MADISON
PERSONNEL
July 2023

NAME	EFFECTIVE DATE	PRESENT STATUS	RECOMMENDED STATUS	PRESENT RATE/SALARY	RECOMMENDED RATE/SALARY	POSITION
Tighe, Samantha	6/5/2023		FT		\$48,588.80	Recreation & Intramural Coordinator
Haslett, Rebecca	6/6/2023	TEMP	TEMP	10.81	10.81	Recreation Assistant
Hively, Wiatt	6/7/2023	FT	FT	26.67	28.90	Lineworker Apprentice
Lunde, Houston	6/9/2023		TEMP		11.14	After School Program
Flanagan, Steven	6/10/2023		TEMP		27.62	Police Officer
Reilly, Caileb	6/12/2023		TEMP		10.81	Recreation Assistant
Brown, Ethan	6/23/2023		TEMP		10.81	Climbing Wall
Hasleton, Grant	6/26/2023	TEMP	TEMP	13.19	13.72	MAC Lifeguard/WSI
Schultz, Mallorie	6/26/2023	TEMP	TEMP	13.72	14.51	MAC Lead Lifeguard
Hansen, Riki	6/30/2023		FT		22.11	Heavy Equipment Operator
Williams, Andrew	6/30/2023		FT		25.66	Police Officer



**2023-2024 Retail (on-off sale) Malt Beverage & SD Farm Wine
License Renewals**

OWNER

GAYLEN'S GOURMET POPCORN LLC

BUSINESS NAME

GAYLEN'S GOURMET POPCORN

ADDRESS

118 E CENTER ST

May 2023 Building Permit Report

Date	Permit No.	Owner	Address	Use	Type of Construction	Contractor	Estimated Build Cost	Permit Fee
5/1	8361	Abigail Simpson	721 NE 7th Street	Res	Repair damaged fence from May 2022 storm	American Fence Company 47061 Charlotte Court Sioux Falls, SD 57108	\$5,233.57	-
5/2	8383	Living Hope Church	520 NW 3rd Street	Com	10 x 12 Wood storage shed, asphalt shingles.	Randy Cundy 23113 455th Avenue Madison, SD 57042	\$2,500.00	\$38.50
5/4	8386	United Methodist Church	304 N Egan Avenue	Com	Tear off existing BUR, install 60 mil adhered EPDM & 4 1/2" layer of Iso.	ARS PO Box 39 Sioux Falls, SD 57101	\$159,020.00	-
5/4	8403	Bill Pickard	106 Ramm Heights	Res	Wood deck over concrete	Self	\$400.00	\$10.00
5/4	8384	Dawn & Larry Grad	423 S Harth Avenue	Res	Remove and replace shingles	G&M Repair 107 N Chicago Avenue Madison, SD 57042	\$7,000.00	\$79.00
5/8	8385	City of Madison	435 S Highland Avenue	Com	Alterations to existing metal building for use as a city utility shop.	Hegg Construction 1300 W 57th Street #1 Sioux Falls, SD 57109	\$528,300.00	-
5/11	8387	Bev Mader	1211 SW 1st Street	Com	Move shop building located on owner's property to another location on property	Scott William's Construction 161 Ramm Heights Madison, SD 57042	\$20,000.00	\$196.00
5/11	8388	David Lampe	204 N West Avenue	Res	Install new 36" door with side skylight	Self	\$2,000.00	\$34.00
5/15	8389	Jason Havlik	711 W Center Street	Res	Reside house with LP Smartsiding	H&S Builders Inc. 23447 451st Avenue Madison, SD 57042	\$5,000.00	\$61.00
5/17	8363	Brian & Damaris Higuera	1193 Cyber Court	Res	New 6' white vinyl fence	American Fence 47061 Charlotte Court Sioux Falls, SD 57108	\$17,347.00	\$178.00
5/17	8390	Tim Salmen	1127 NE 9th Street	Res	Replace 3 x 4 platform and stairs with 12 x 12 composite deck	Self	\$5,000.00	\$61.00
5/18	8391	Daisy Snoozy	513 SE 4th Street	Res	3 x 5 wooden chicken coop	Self	\$500.00	\$10.00
5/18	8392	Gaylen's Popcorn	120 E Center Street	Com	Safety fence with posts, front improvements	Self	\$900.00	\$25.00
5/19	8393	Josh Windle	1188 Cyber Court	Res	4' Black vinyl chain link fence	Self	\$3,000.00	\$43.00
5/23	8396	Ryan Clites	808 NE 5th Street	Res	Expanding current chain link fence	Self	\$1,250.00	\$27.25
5/25	8394	Regan Ciarlotta	102 NE 9th Street	Res	Remove and replace shingles damaged from May 2022 storm	G&M Repair 107 N Chicago Avenue Madison, SD 57042	\$4,000.00	-
5/25	8395	Richard Buechler	1333 NE 4th Street	Res	76 x 30 patio	Self	\$956.00	\$25.00
5/25	8398	Gerald Johnson	303 & 309 S Division Avenue	Res	47" welded wire fence	Self	\$2,300.00	\$36.70
5/25	8399	Robin Shaw	1034 NE 11th Street	Res	Demolition	H&S Builders Inc 23447 451st Avenue Madison, SD 57042	\$40,000.00	\$10.00

May 2023 Building Permit Report

5/25	8397	Marshall Dennert	415 N Josephine Avenue	Res	New 32 x 40, 2 story garage, LP siding, asphalt shingles	Self	\$70,000.00	\$381.00
5/30	8418	Brittany Waldman	45493 234th Street	Com	Demolition	Callies Homes 23555 434th Avenue Howard, SD 57349	\$30,000.00	\$10.00
5/30	8420	Rachel Roling	623 NW 1st Street	Res	Replace existing fence damaged from May 2022 storm	DeVries Handyman & Repair 813 NE 8th Street Madison, SD 57042	\$10,000.00	-
5/30	8400	Cathy Olinger	318 N Catherine Avenue	Res	Replace old deck with new greentreated Cedar, aluminum spindles	Sam Anderson 46034 SD HWY 34 Wentworth, SD 57075	\$2,500.00	\$38.50
5/31	8419	Loren Quam	1418 Hampton Court	Res	Replace old deck with new wood deck	Self	\$2,000.00	\$34.00
	24					Total	\$919,206.57	\$1,225.45



July 6, 2023

Mr. Nathan Zimmerman, Utility Director
City of Madison
116 W Center Street
Madison, SD 57042

RE: **Recommendation for Contract Award
Furnishing 69 x 115/13.8 kV Power Transformer – Green Substation
City Bid Number 924; DGR Project No. 415935**

Dear Nate:

We have completed our review of the bids that were received on June 7, 2023 for furnishing a new substation power transformer for the Green Substation. Three bids were received, which we have checked for mathematical accuracy and compliance with the bid specifications. A bid summary form is attached for your reference, which we will send to each of the bidders. The base bids received ranged in total purchase price from \$1,915,999.00 to \$2,072,400.00.

Pennsylvania Transformer Technology, Inc. (PTTI) of Canonsburg, PA submitted the low bid in both purchase price (\$1,915,999.00) and evaluation price (\$2,220,579.00). The bid from PTTI includes a payment option for firm pricing, and appears to be in compliance with the technical specifications. We requested that PTTI clarify several items in their bid, and they responded to our satisfaction.

We therefore recommend that PTTI be awarded the contract for the supplying the power transformer. Feel free to contact us with any questions you or the Commission may have. Please let us know when an award has been made, and we will prepare the contract documents for signature.

On a separate but related note, since lead times are presently around 2 years for substation transformers we recommend that the City proceed with obtaining bids for a new 115 kV rated power transformer for the Southeast Substation very soon, to prepare for conversion of that substation to 115 kV per the recent notice provided by East River Electric.

Best Regards,

DGR Engineering

A handwritten signature in black ink, appearing to read 'Chad Rasmussen'.

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

BID SUMMARY

FURNISHING 69 x 115 / 13.8 kV POWER TRANSFORMER - GREEN SUBSTATION

City of Madison, South Dakota

City Bid Number 924

(1) - 12/16/20 MVA, ONAN/ONAF/ONAF @ 55° C

13.44/17.92/22.4 MVA, ONAN/ONAF/ONAF @ 65° C

Dual Rated High Side 69 Y/39.84 kV x 115 Y/66.4 kV to 13.8 Y/7.97 kV with LTC



DGR Project Number 415935

Bid Letting: June 7, 2023 - 2:00 PM

Page 1 of 1

Bidder and Address	Bid Security	BASE BID		Manufacturer / Location	Guaranteed Delivery Date	Comments
		Total Purchase Price (6c)	Total Eval. Price (7g)			
Pennsylvania Transformer Technology, Inc. (PTTI) 30 Curry Avenue Canonsburg, PA 15317	10% Bid Bond	\$1,915,999.00	\$2,220,579.00	PTTI / Canonsburg, PA	96-100 Weeks ARO	-Alternate payment options given. - Liquidated damages capped at 5% of the total contract price.
WEG Transformers 6350 Weg Drive Washington, MO 63090	10% Bid Bond	\$2,072,400.00	\$2,327,055.00	WEG / Huehuetoca, Mexico	95-100 Weeks ARO	- Alternate payment options given. - Liquidated damages capped at 5% of the total contract price.
Delta Star, Inc. 3550 Mayflower Drive Lynchburg, VA 24501	10% Bid Bond	\$2,063,246.00	\$2,328,901.00	Delta Star / Lynchburg, VA	160-170 Weeks ARO	- Alternate payment options given. - Freight costs are not firm. - Liquidated damages capped at 5% of the total contract price.



City of Madison

Memorandum – Restricted Use Site Property Purchase

To: Mayor and City Commission
From: Jameson Berreth, City Administrator
Subject: Proposed purchase of property for new Restricted Use Site
Date: July 7, 2023

This memo provides a progress update and recommendation regarding the purchase of property for a new location for the City's Restricted Use Site (RUS).

Background

The current RUS is located at 23241 446th Avenue, which is 2 miles west and ½ mile north of Junius. The site receives a variety of construction debris and old furniture from residents of Madison as well as the surrounding area. The site does not accept items such as garbage, recyclables, yard waste, concrete, appliances, and more. It is open with set hours during the summer month and appointment only during the winter months.

The City leases the property from Klein Land and Cattle II, LLC to operate the RUS on the property. This 2017 contract ends either after ten years or when the cell is filled and closed, whichever is sooner. Annual rent paid by the City is \$25,000 per year. Upon end of the lease, the property owner is allowed to use the land for hay or grazing but not for farming purposes. The City maintains responsibility for ensuring any solid waste materials deposited at the RUS continue to be buried and not exposed per state regulations.

Due to the existing cell nearing full capacity, the City Commission discussed options at the January 13, 2023 meeting. The Commission directed staff to explore options for acquiring land for a new RUS.

Proposed Land Purchase

A property in western Lake County has been identified as a possible location for a new RUS. It consists of two parcels totaling approximately 73 acres and is owned by Wayne and Dawn Bessman. The current RUS, shown in the map below as #1, is 7.5 miles west of Madison. The potential new site, shown as #2, is 3.5 miles further west on HWY 34 and 1 mile north on 442nd Avenue.



Figure 1 – Locations of existing RUS (#1) and proposed RUS (#2) in relation to City of Madison.

The Bessman property is believed to have suitable soil and topographic conditions for a RUS. Approval of a RUS permit from SD Department of Agriculture and Natural Resources (DANR) as well as a Conditional Use Permit from Lake County are required to operate at this location.

Negotiations with the landowners arrived at a purchase price of \$7,500/acre for a total of \$547,800. The property is proposed to be purchased through a Contract for Deed and the payment made in three equal payments on August 1 of 2023, 2024, and 2025. A proposed Contract for Deed Agreement is included in the agenda packet. The Agreement includes a clause which makes the purchase contingent on issuance of the necessary permit from DANR. Consideration before the City Commission is approval of the Agreement.

If Agreement is approved, City staff would take steps to submit the property for the required Conditional Use Permit and SD RUS permit. Staff also would engage with an experienced engineering firm to prepare a contract for design of the new site and initial cell. The contract would be presented for Commission consideration at the July 24th meeting.



Figure 2 – Aerial of proposed property to be purchased, consisting of two parcels.

Staff recommendation

Approve the Agreement to purchase the property for use as a RUS. The current cell is near capacity, and a new cell is needed. No other property has been identified which meets State requirements. It is also more cost effective to move to the new site than to continue paying annual lease payments at the current location.

INSTRUMENT PREPARED BY:
JENCKS LAW, P.C.
121 NORTH EGAN
PO BOX 442
MADISON, SD 57042
PHONE: 605.256.0121

CONTRACT FOR DEED

THIS CONTRACT FOR DEED (“Agreement”) is made and entered to as of this ____ day of _____, 2023, by and between Wayne Bessman and Dawn Bessman of 59 Round Lake Drive, Wentworth, South Dakota 57075 hereinafter called “Sellers”, and City of Madison, a South Dakota municipality, of 118 West Center Street, Madison, South Dakota 57042 hereinafter called “Buyer”.

1. Conveyance. If the Buyer shall first make the payments and perform the covenants hereafter mentioned on their part to be made and performed, Sellers covenant and agree to convey and assure to the Buyer in fee simple, clear of all encumbrances, except easements, utility rights-of-way, and restrictive covenants, if any, by a good and sufficient warranty deed, the real property located in Lake County, State of South Dakota, and legally described as follows:

The SE ¼ of the SW ¼ of Section 31, Township 107 North, Range 54, West of the 5th P.M., Lake County, South Dakota; being 40 acres more or less.

And

Lot 2 of Bessman’s Subdivision of Lot 4 of Section 31, Township 107 North, Range 54, West of the 5th P.M., Lake County, South Dakota; being 33.04 acres more or less.

(sometimes known as the “Premises”)

2. Purchase Price. The Buyer hereby covenants and agrees to pay to Sellers the sum of Five-Hundred and Forty-Seven Thousand Eight Hundred Dollars (\$547,800), plus interest in the amount of 8%, payable at such place as the Sellers may from time to time designate and to be due and payable at the time and in the manner set forth below:

- A. The sum of One-Hundred and Eighty-Two Thousand, Six-Hundred Dollars (\$182,600), due on August 1, 2023.
- B. The sum of One-Hundred and Eighty-Two Thousand, Six-Hundred Dollars (\$182,600) plus interest of Twenty-Nine Thousand Two-Hundred and Sixteen Dollars (\$29,216), for a total of Two-Hundred and Eleven Thousand, Two Hundred Sixteen Dollars (\$211,216), due on August 1, 2024, owing and payable to Sellers at their address.
- C. The sum of One-Hundred and Eighty-Two Thousand, Six-Hundred Dollars (\$182,600) plus interest of Fourteen-Thousand, Six-Hundred and Eight Dollars (\$14,608), for a total of One-Hundred and Ninety-Seven Thousand, Two-Hundred Eight Dollars (\$197,208), due on August 1, 2025, owing and payable to Sellers at their address.

3. Real Estate Taxes. Buyer agrees to pay one half of the 2023 real estate taxes due and payable in 2024, as well as all real estate taxes for all future years, and any arrearages that may exist during any period of this Agreement. Sellers shall pay one half the 2023 real estate taxes due in 2024.

4. Insurance. The Buyer shall, at all times during the period of this Agreement, obtain and maintain a policy of insurance insuring the improvements now existing or hereafter erected on the property against loss or damage by fire, lightning, and all other

risks covered by extended coverage insurance then in use in the State of South Dakota in an amount equal to the full insurable value thereof (subject to reasonable loss deductible clauses). Both the Buyer and Sellers shall be named as additional insureds under the policy. Copies of the insurance policies required under this paragraph or certificates shall be delivered to the Sellers by the Buyer.

The Buyer shall also obtain and maintain, at all times during the contract period, general accident and public liability insurance under which both the Sellers and Buyer shall be named as insureds in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury (including death) in any one occurrence, and not less than One Million Dollars (\$1,000,000.00) for property damage in any one occurrence.

Both of said policies shall contain a provision that such insurance may not be canceled by the issuer thereof without at least thirty (30) days prior advance written notice to the Buyer and Sellers. Buyer shall also furnish to the Sellers a copy of the policy or a certificate evidencing the required public liability insurance.

Buyer shall indemnify and defend Sellers from any loss on the Premises during the executory period of this Contract, including but not limited to reasonable attorneys' fees.

5. Lease Encumbrance. The parties understand and agree that the real property that is the subject of this Contract is leased for the year 2023 and the Buyer's rights will be subject to and subordinate to the lease rights. Sellers are entitled to all rental payments on the Premises through 2023.

6. Mechanic's and Materialman's Liens. Buyer agrees that they will pay for any and all improvements, alterations and additions made to the premises in a timely manner.

The parties mutually agree that the filing of a mechanic's or a materialman's lien against the premises as provided for under SDCL 44-9 which is not released within sixty (60) days after the filing of the same shall constitute a default under this Agreement.

Sellers warrant that no existing liens, mortgages or other encumbrances currently exist against the real property at issue herein. In the event that any form of lien or other encumbrance is discovered that is the product of the Sellers' actions or inactions, the Buyer may terminate this Agreement immediately and without notice with no further penalty or monetary amounts being owed hereunder and with all proceeds paid by Buyer retained by Sellers.

7. Title Insurance. Sellers agree to deliver to Buyer at least fifteen (15) days prior to final payment hereunder, a title commitment to provide an Owner's Policy of Title Insurance in the amount of the purchase price. The commitment so furnished will evidence that the Sellers have good and marketable title to the property, subject only to easements and restrictions of record. The cost of obtaining the Owner's Title Insurance Policy shall be shared equally between Buyer and Sellers.

8. Final Closing. Upon payment in full by the Buyer to the Sellers, the Sellers will convey by warranty deed to Buyer good and marketable title to the property, free and clear of all liens and encumbrances except easements and restrictions of record.

9. Escrow. Wayne Bessman and Dawn Bessman and the City of Madison agree to have David J. Jencks, of Jencks Law, P.C. to serve as the escrow agent to hold the signed Warranty Deed until he can confirm with Wayne Bessman and Dawn Bessman that Buyer has performed all covenants and obligations associated with this Contract for Deed.

10. Assignment. The Buyer agrees that it will not assign or transfer any of their interest in this Agreement to a third party without first obtaining the prior written consent of the Sellers. However, any such transfer or assignment by Buyer shall not relieve the Buyer of their liability hereunder.

11. Possession and Closing. The Buyer shall have possession of the property on August 1, 2023.

12. Time of Payment. It is mutually understood and agreed by and between the parties to this Contract that the time of payment shall be an essential part of this Agreement. In the event of Buyer's failure to make the yearly rental payment by the 20th of each January, Sellers shall be entitled to a late payment fee of 2.00% of the yearly principal payment then due.

13. Acceleration. In the event the Buyer fail to make any of the payments of interest or principal as required under this Agreement or to perform any of the other covenants or conditions agreed to be performed by him under this Agreement, then the entire principal balance, together with accrued interest due and owing under this Agreement shall, at the election of the Sellers, become immediately due and payable.

14. Notice of Default. In the event the Buyer fail to make any payment of principal or interest on the due date, this Agreement may, at the option of the Sellers, be forfeited and determined by giving to the Buyer thirty (30) days' notice in writing of the intention of the Sellers to cancel and determine this Agreement, setting forth in the notice the amount due upon the Agreement and the time and place, when and where, payment of the entire principal balance, plus accrued interest, can be made by the Buyer to the Sellers. Notwithstanding this paragraph, however, the Buyer shall have the right to cure and

correct any default and said default will be considered cured and corrected if made within thirty (30) days of the initial written notice of default being received by certified mail. If said default is not cured and corrected within thirty (30) days of such receipt, Sellers may cancel and determine this Agreement in the same manner and to the same extent as for Buyer's failure to pay principal and interest when due.

15. Notice. Notice shall be deemed to be given when mailed by certified mail to the respective parties hereto and the proper current addresses.

16. Binding Effect. This Agreement and all of the covenants and agreements herein continued shall extend to and be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.

17. Prepayment. The Buyer may not pre-pay this Agreement, but if a Court Order allows it to do so, Buyer will owe Sellers a one-time charge and payment in excess of all principal and interest stated herein of \$25,000.00.

18. Entire Agreement. This Agreement is the entire agreement between the parties and supersedes all prior written agreements that have been made between the parties.

19. Contingency. This Agreement is contingent upon the Buyer's permission and issuance of a permit ("Permit") from the South Dakota Department of Environment and Natural Resources to operate a restricted use waste site on the herein described property. In the event that Buyer is not issued a Permit, this Agreement shall be null and void with the Buyer to pay the costs of all release and satisfactions with the Lake County Register of Deeds and a \$500.00 fee to Sellers.

first above written.

SELLERS:

Wayne Bessman

Dawn Bessman

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF LAKE)

On this the ____ day of _____, 2023, before me, the undersigned officer, personally appeared Wayne Bessman and Dawn Bessman, known to me or satisfactorily proven to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires: _____

BUYER:

CITY OF MADISON

By: _____

Its: _____

ATTEST:

CITY FINANCE OFFICER

Sonya Wilt

STATE OF SOUTH DAKOTA)

: ss

COUNTY OF LAKE)

On this the ____ day of _____, 2023, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires: _____

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 **HME COMPANIES, 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. 2022-30, 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. 2022-30 to approve the Tax Increment District Three 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 HME COMPANIES, 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 2022-30 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
HME Companies, 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

HME Companies, LLC

By:

Its:

EXHIBIT A

Boundary Resolution

EXHIBIT B

Project Plan

EXHIBIT C

Assignment Agreement

Assignment and Assumption Agreement

This Assignment ("Assignment") of Contract for Private Development Tax Incremental District Number Three, City of Madison, South Dakota is made this _____ day of July, 2023 by and between the HME Companies LLC ("Assignor") and Rural Electric Economic Development, Inc. ("Assignee").

RECITALS

A. Assignor, as Developer, entered into that certain Contract for Private Developmental Tax Incremental District Number Three, City of Madison, South Dakota, dated June 6, 2022 (the "Agreement"); and

B. Assignor desires to assign its rights and interest to the Agreement and Assignee desires to assume such rights and obligations pursuant to the terms of this Assignment; and

C. City of Madison in the State of South Dakota, desires to consent to this Assignment to facilitate closing.

NOW, THEREFORE, the parties agree:

1. For the sum of \$1.00 and other good and valuable consideration from Assignee to Assignor, Assignor hereby assigns to Assignee, and Assignee hereby accepts, the Developer's rights and obligations in and to the Agreement.
2. Assignor warrants that (1) the Agreement is in full force and effect and has not been modified or amended, (2) Assignor owns and has the right to transfer the rights and interests covered by this Assignment, free and clear of any previous transfer or other adverse claim or interest, and (3) neither Assignor nor, to Assignor's knowledge, the Developer under the Agreement is in default in performing any obligations under the Agreement.
3. By accepting this assignment, Assignor still agrees to perform all of the obligations of the Developer under the Agreement that first arise or become due on or after the effective date of this Assignment.
4. Assignor shall NOT be released from any rights and obligations under the Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as their free and voluntary act and deed, on the date indicated by each signature.

(Signature page to follow)

ASSIGNOR:

HME Companies LLC

ASSIGNEE:

Rural Electric Economic Development, Inc.

By: Lori Niklason, Managing Partner

By: Mike Jaspers, Administrator

By: Kirk Simet, Managing Partner

By: Eric Fosheim, Assistant Administrator

CONSENT

City of Madison, of the State of South Dakota, hereby consents to the above transfer.

City of Madison

Roy Lindsay, Mayor

_____, 2023
Month Date

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is entered into as of this ____ day of June 2023, (this “Agreement”) by and between the **CITY OF MADISON** a South Dakota Municipality (“City”), and **TROJAN VILLAGE, LLC** (Developer”);

WITNESSETH:

WHEREAS, City has an interest in promoting economic development by constructing commercial property, single family housing, and multifamily 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 Commission on April 17th, 2023, adopted Resolution #2023-13 a copy of which is attached hereto as *Exhibit A*, City created Tax Increment District Number 5 (the “TID” or “District”) encompassing the following described real property:

- ALL THAT PART OF KINNEY’S SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., LAKE COUNTY, SOUTH DAKOTA, EXCEPT DEEDED AND PLATTED PORTIONS THEREOF AND EXCEPT THE EAST 404 FEET OF THE SOUTH 1473 FEET THEREOF, AND EXCEPT THE SOUTH 256 FEET OF THE NORTH 556 FEET OF THE WEST 409 FEET THEREOF, AND EXCEPT THE WEST 150 FEET OF THE EAST 1083 FEET OF THE NORTH 333 FEET THEREOF, AND EXCEPT THE WEST 600 FEET OF THE EAST 663 FEET OF THE NORTH 333 FEET THEREOF, AND EXCEPT LOTS 1 AND 2 OF SCHWEBACH ADDITION, AND EXCEPT ODENBRETT’S FIRST ADDITION, AND EXCEPT LOTS 1 AND 2 OF DSU FOUNDATION ADDITION, SUBJECT TO ANY RECORDED EASEMENTS AND ENCUMBERANCES CONTAINED THEREIN

AND LOT 3 IN BLOCK 1 OF DSU FOUNDATION ADDITION TO THE CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

All Located in the City of Madison, Lake County, South Dakota including within and adjacent rights-of-ways.

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 April 17th, 2023, the City Commission adopted Resolution #2023-13 to approve the Tax Increment Project 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 \$5,856,702 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 Trojan Village, LLC

“Grant” means an amount not to exceed \$5,856,702 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 Trojan Village, LLC 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 Obligation. CITY agrees to pay to DEVELOPER Available Tax Increment Funds revenues it receives for the District, the total of which shall not exceed \$5,856,702 together with imputed interest.

2.02 Annual Appropriation. This Agreement does NOT constitute a debt within the meaning of article 13 section 4 of the South Dakota Constitution. No obligation is created beyond the fiscal year in which an annual appropriation has been made.

2.03 Grant. Subject to annual appropriation The right to receive the Available Tax Increment Funds referred to in Section 2.01 is a grant under the Act. The Grant is a personal property right vested with DEVELOPER on the date of execution of this Agreement. The Grant shall constitute a specific project cost

under the Act and is deemed made on the date of the execution of this Agreement.

2.04 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 such obligations.

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

- (a) Developer is a corporation 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; and
- (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).
- (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.

For the purposes of § 13-13-10.9, economic development is only those tax increment financing districts where:

- (1) 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 by the governing body that has zoning authority over the land contained within the tax incremental district.

2.06 Approvals. The City's obligations pursuant to this Agreement are specifically conditioned upon the resolution and ordinances implementing TIF #5 becoming effective.

2.07 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.

2.08 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 its continued cooperation.

2.09 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.

2.10 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 \$5,856,702 of improvements to the property.

(b) Completion of the Project Improvements: Developer shall diligently work to complete the respective portions of the project by 2025.

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 Public Improvements will 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's standards and specifications.

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 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, (d) provide the City all necessary information, including documentation of actual expenses incurred for Reimbursable Project Costs, and (e) submit

written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the TID was created detailing the amount of Tax Incremental Revenues.

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.

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, 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 Lake 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:

City

City of Madison
116 W Center Street
Madison, SD 57042

Developer

Trojan Village, LLC
23472 451st Ave
Madison, SD 57042

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.

6.08 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.

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

City of Madison

ATTEST:

Roy Lindsay, Mayor

Sonya Wilt, City Finance Officer

Resident Attorney

Trojan Village, LLC

By:

Its:

EXHIBIT A

Boundary Resolution

RESOLUTION NO. 2023-13

**A RESOLUTION APPROVING AND RECOMMENDING OF TAX INCREMENTAL
DISTRICT PLAN NUMBER FIVE, 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 April 11th, 2023, 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:

ALL THAT PART OF KINNEY'S SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., LAKE COUNTY, SOUTH DAKOTA, EXCEPT DEEDED AND PLATTED PORTIONS THEREOF AND EXCEPT THE EAST 404 FEET OF THE SOUTH 1473 FEET THEREOF, AND EXCEPT THE SOUTH 256 FEET OF THE NORTH 556 FEET OF THE WEST 409 FEET THEREOF, AND EXCEPT THE WEST 150 FEET OF THE EAST 1083 FEET OF THE NORTH 333 FEET THEREOF, AND EXCEPT THE WEST 600 FEET OF THE EAST 663 FEET OF THE NORTH 333 FEET THEREOF, AND EXCEPT LOTS 1 AND 2 OF SCHWEBACH ADDITION, AND EXCEPT ODENBRETT'S FIRST ADDITION, AND EXCEPT LOTS 1 AND 2 OF DSU FOUNDATION ADDITION, SUBJECT TO ANY RECORDED EASEMENTS AND ENCUMBERANCES CONTAINED THEREIN

AND LOT 3 IN BLOCK 1 OF DSU FOUNDATION ADDITION TO THE CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

All Located in the City of Madison, Lake County, South Dakota including within and adjacent rights-of-ways.

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 April 11th, 2023.

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:

Lake County Commission
City of Madison
East Dakota Water Development District
Madison Central School District

WHEREAS, a hearing was held on April 11th, 2023, as provided in such Notice, and all interested parties were allowed a reasonable opportunity to be heard on the proposed Tax Incremental District Five plan;

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

Authority and declaration of necessity. Pursuant to SDCL §§ 11-9-4 & 11-9-13, City of Madison - City Commission hereby declares the necessity to form a tax incremental district in the City of Madison.

NOW THEREFORE, IT IS HEREBY RESOLVED:

1. **Authority and Declaration of Necessity.** The City Commission declares the necessity for the approval of Tax Incremental District Number Five 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 City Commission makes the following findings with regard to economic development:
 - 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 Five 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 assessed value of the District plus the tax incremental base of all other existing Districts in the City does not exceed Ten (10%) percent of the total assessed valuation in the City;
3. **Boundaries of District.** The Boundaries of the district are determined to be as follows:

ALL THAT PART OF KINNEY'S SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 106 NORTH, RANGE 52 WEST OF THE 5TH P.M., LAKE COUNTY, SOUTH DAKOTA, EXCEPT DEEDED AND PLATTED PORTIONS THEREOF AND EXCEPT THE EAST 404 FEET OF THE SOUTH 1473 FEET THEREOF, AND EXCEPT THE SOUTH 256 FEET OF THE NORTH 556 FEET OF THE WEST 409 FEET THEREOF, AND EXCEPT THE WEST 150 FEET OF THE EAST 1083 FEET OF THE NORTH 333 FEET THEREOF, AND EXCEPT THE WEST 600 FEET OF THE EAST

663 FEET OF THE NORTH 333 FEET THEREOF, AND EXCEPT LOTS 1 AND 2 OF SCHWEBACH ADDITION, AND EXCEPT ODENBRETT'S FIRST ADDITION, AND EXCEPT LOTS 1 AND 2 OF DSU FOUNDATION ADDITION, SUBJECT TO ANY RECORDED EASEMENTS AND ENCUMBERANCES CONTAINED THEREIN

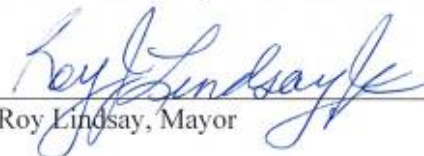
AND LOT 3 IN BLOCK 1 OF DSU FOUNDATION ADDITION TO THE CITY OF MADISON, LAKE COUNTY, SOUTH DAKOTA

All Located in the City of Madison, Lake County, South Dakota including within and adjacent rights-of-ways.

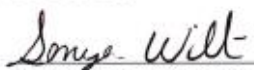
4. **Findings of Annual Appropriation TID.** Tax Increment District #5 will be designated as an Annual Appropriations TIF to ensure that it does NOT count against constitutional debt.
5. **Creation of Tax Incremental Fund.** There is hereby created, pursuant to SDCL 11-9-31, a Tax Incremental District Number Five Fund, which shall be a segregated asset account. All tax increments collected pursuant to Tax Incremental District Number Five shall be deposited into the Tax Incremental District Number Five Fund. All funds in the Tax Incremental District Number Five Fund shall be used solely for those purposes expressly stated and reasonably inferred in SDCL Chapter 11-9
6. **Approval of Tax Increment Project Plan.** The City Commission of the City of Madison does hereby approve the Tax Increment Plan Number Five, a copy of which is on file with the City Finance Officer.

Dated this 17th Day of April 2023.

CITY OF MADISON, SOUTH DAKOTA

BY: 
Roy Lindsay, Mayor

ATTEST:


Sonya Wilt, City Finance Officer

Project Plan

EXHIBIT B

Assignment Agreement

EXHIBIT C

Date of Issuance: 7/6/2023	Effective Date: 7/10/2023
Owner: City of Madison	Owner's Contract No.:
Contractor: Winter Contracting, Inc.	Contractor's Project No.:
Engineer: Banner Associates, Inc.	Engineer's Project No.: 23885.00
Project: NW 9 th St/Union Ave Reconstruction	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description: Add bid item for tree removal (8 trees); Add bid item for sanitary sewer cleanout assembly (2 assemblies)

Attachments: RFP #4 and RFP #6

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>3,475,000.00</u>	Original Contract Times: Substantial Completion: <u>September 15, 2023</u> Ready for Final Payment: <u>October 6, 2023</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>5</u> : \$ <u>105,253.50</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>5</u> : Substantial Completion: <u>8 Days - See Exhibit A</u> Ready for Final Payment: <u>8 Days - See Exhibit A</u> days
Contract Price prior to this Change Order: \$ <u>3,580,253.50</u>	Contract Times prior to this Change Order: Substantial Completion: <u>Same as above</u> Ready for Final Payment: <u>Same as above</u> days or dates
[Increase] [Decrease] of this Change Order: \$ <u>21,600.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>1 Day - See Exhibit A</u> Ready for Final Payment: <u>1 Day - See Exhibit A</u> days or dates
Contract Price incorporating this Change Order: \$ <u>3,601,853.50</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>September 28, 2023</u> Ready for Final Payment: <u>October 19, 2023</u> days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)		Contractor (Authorized Signature)		
Title: <u>Prime Professional</u>	Title: <u>Mayor</u>		Title: _____		
Date: <u>7/6/2023</u>	Date: _____		Date: _____		

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____



**GEOTEK ENGINEERING
& TESTING SERVICES, INC.**
909 East 50th Street North
Sioux Falls, South Dakota 57104
605-335-5512 Fax 605-335-0773
www.geotekeng.com

June 5, 2023

City of Madison
116 W. Center Street
Madison, South Dakota 57042

Attn: Ryan Hegg, CFM

Subj: Cost Proposal
Construction Materials Testing Services
City Administration Building
S. Highland Avenue
Madison, South Dakota

We are pleased to present this cost proposal to provide materials testing services for the referenced project. We understand that it is the responsibility of the contractor to engage a qualified testing and inspecting agency to perform field tests & inspections and prepare reports.

Based on the project structural plans, our geotechnical exploration report (GeoTek #22-031, Dated January 28, 2022), the project structural plans, the International Building Code: Chapter 17, and our experience on past "similar" projects, we have estimated the number of site visits, hours, as well as, the number of the various tests required during construction.

The project will require a specialized team of our staff including a Staff Engineer and/or Senior Engineering Technician for earthwork excavation observations and testing, an ACI Certified Technician (Field I) for rebar observations, concrete testing & masonry grout testing and a Certified Weld Inspector (CWI) for structural steel welds, precast welds and/or bolt observations. Reports will be reviewed and signed by a registered professional engineer and/or project manager.

We estimate the project will include (6 to 8) trips for the earthwork observations & testing, (32 to 40) trips to perform rebar observations, concrete testing, masonry grout testing and sample pick up, (3 to 5) trips to perform weld and/or bolt observations, (16 to 24) density tests, (2 to 3) proctor tests, (16 to 18) sets of four concrete compression samples, (1 to 2) sets of four masonry grout compression samples and (6 to 8) hours of CWI on site for weld and/or bolt observations.

The trips will be pro-rated if we are in the area on another project and/or the trip coincides with other testing on the project (i.e., density testing the same time as concrete testing). All testing will be performed in accordance with ACI, AWS, AISC and ASTM standards.

The fees for our services will be charged on a unit cost basis. For the anticipated work scope, we estimate the cost of our services to not exceed \$18,750.00, plus applicable sales tax. We will not exceed the estimated total without prior authorization. Monthly invoices will be based on the actual hours and tests performed, along with a percentage of the lump sum fee for project management and reporting. Our estimated total does not include services required by change order, outside of the project plans & specifications, for standby time or failing tests.

Since our services are not required on a full-time basis, it is the responsibility of the general contractor (unless delegated to the subcontractor) to provide ample notification for our services. A "General Conditions" sheet is attached as part of our proposal.

GeoTek Engineering and Testing Services, Inc. appreciates the opportunity of being considered for this project. If you have any questions or require additional information, please contact our office.

GeoTek Engineering & Testing Services, Inc.

Shane M. Lindner

Shane M. Lindner
Materials Unit Manager

ACCEPTANCE:

Signature: _____
Printed Name: _____
Title: _____
Date: _____

GENERAL CONDITIONS

SECTION 1: PROJECT INFORMATION

1.1 The Client will make available to GeoTek all known information regarding existing and proposed conditions, requirements, and all other information that may affect the cost, progress, safety, and performance of the work. If new information becomes available during GeoTek's work, Client will provide such information to GeoTek in a timely manner.

SECTION 2: SITE ACCESS AND PERMITS

2.1 Client agrees to render reasonable assistance requested by Consultant to enable performance of tests and/or observations without delay or interference, and, upon request of Consultant, to provide suitable work space.

SECTION 3: SAFETY

3.1 The Client shall inform GeoTek of any known or suspected hazardous materials or unsafe conditions at the work site.

3.2 GeoTek shall only be responsible for the safety of GeoTek employees at the work site.

SECTION 4: SAMPLES

4.1 GeoTek will retain nonhazardous samples for a maximum period of 30 (thirty) days of the date of the report. Upon written request, samples can be shipped or stored at the Client's expense.

SECTION 5: RECORDS

5.1 Documents prepared by GeoTek are considered instruments of services that will remain the property of GeoTek. GeoTek will retain these records for a period of five years, during which time the documents will be available to the Client during normal business hours.

SECTION 6: RESPONSIBILITIES

6.1 The work performed by GeoTek will not relieve other parties of their responsibilities to perform work in accordance with the contract documents or specifications.

6.2 GeoTek is not responsible for the interpretations or modifications of GeoTek's recommendations by other parties.

SECTION 7: STANDARD OF CARE

7.1 GeoTek will perform services consistent with the level of care and skill normally performed by other firms in the same profession at the time of our service, geographic area and under similar budgetary constraints. No other warranty, expressed or implied is made.

SECTION 8: LIMITATION OF LIABILITY AND INDEMNITY

8.1 GeoTek will indemnify and hold harmless and defend the Client against any claim, loss, judgment, liability or expense for damage to any property or for the death or injury to any person caused by or arising from the negligent acts or omissions or willful misconduct of GeoTek, its agents and employees pursuant to the performance of this Agreement

8.2 The Client will indemnify and hold harmless and defend GeoTek against any claim, loss, judgment, liability or expense for damage to any property or for the death or injury to any person caused by or arising from the negligent acts or omissions or willful misconduct of the Client, its agents and employees pursuant to the performance of this Agreement.

SECTION 9: INSURANCE

9.1 Consultant will carry Workers Compensation insurance as required by law. Additionally, Consultant will carry public liability and property damage insurance with a minimum limit of liability of \$500,000 per occurrence and \$1,000,000 aggregate. Certificates of insurance will be provided to Client upon request.

SECTION 10: DELAYS

10.1 If GeoTek is delayed in performance due to any cause beyond its reasonable control, such as strike, fire, act of God, government action, acts of a third party, or the Client, a reasonable time extension for performance of the work shall be granted and GeoTek shall receive an equitable fee adjustment.

SECTION 11: ASSIGNMENTS

11.1 Neither party may assign duties or interest in this agreement without the written consent of the other party. Amendments to this agreement may be amended only by written amendments signed by both the Client and GeoTek.

SECTION 12: PAYMENT

12.1 GeoTek will submit invoices on a monthly basis and a final invoice upon completion of services. Payment is due upon receipt of the invoice and is past due 30 days after invoice date.

12.2 The Client is responsible for informing GeoTek of any disagreements or corrections within 15 days of the invoice date. Unless so informed, the invoices are deemed correct.

12.3 The amount of any excise tax or local, state or federal sales tax that may be imposed is not included in the rates for the services provided. The applicable taxes will be added to the actual billings for services.

12.4 Past due invoices are subject to interest charges of up to 1.5% per month.

12.5 The Client will pay all reasonable litigation expenses or collection expense incurred, including attorney fees that GeoTek incurs in collecting any delinquent amount the Client owes under this agreement.

12.6 Consultant reserves the right to withhold any and all written reports until payment terms are satisfied.

SECTION 13: TERMINATION

13.1 This agreement may be terminated by either party for justifiable reasons after seven days written notice.

13.2 The Client agrees to pay GeoTek for all work performed, including reporting costs to complete the file.

SECTION 14: JURISDICTION

14.1 This agreement shall be construed in accordance with laws of the State in which the project is located.

SECTION 15: SEVERABILITY

15.1 If a provision of this agreement is held to violate a law or regulation, that provision shall be deemed void, but all remaining provisions shall continue in force. The Client and GeoTek will, in good faith, attempt to replace the invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the original intent of the provision.

SECTION 16: ENTIRE AGREEMENT

16.1 This contract represents the entire agreement between the parties, and supersedes all prior representations or agreements.





NW 9TH STREET/UNION AVE RECONSTRUCTION



OVERVIEW

This project includes water, sanitary sewer, and storm sewer utility replacement. Full width roadway reconstruction and partial sidewalk replacement is also part of this project. This project is on the NW side of Madison.

CURRENT STATUS

- Winter shutdown issued due to weather.
- Roadways, driveway approaches and sidewalk temporarily surfaced.

REMAINING WORK

PHASE 1 | NW 9th St from N Highland Ave to N Chicago Ave

- Road Reconstruction, Concrete Work, Asphalt Paving
- Boulevard Restoration and Seeding
- Punchlist

PHASE 2 | NW 9th St From N Chicago to N Josephine Ave

- Removals
- Utilities
- Road Reconstruction, Asphalt Paving, Sidewalk, Driveway Approaches
- Boulevard Restoration and Seeding

SCHEDULE

- Resuming work in PHASE 1: Estimated May 1, 2023
- Starting work in PHASE 2: Estimated End of May 2023
- Substantial Completion PHASE 1: June 15, 2023
- Substantial Completion PHASE 2 West of Josephine: August 11, 2023
- Substantial Completion PHASE 2 East of Josephine: September 15, 2023
- Final completion date: October 6, 2023

CONTACTS

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ENGINEER
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CONTRACTOR
Winter Contracting
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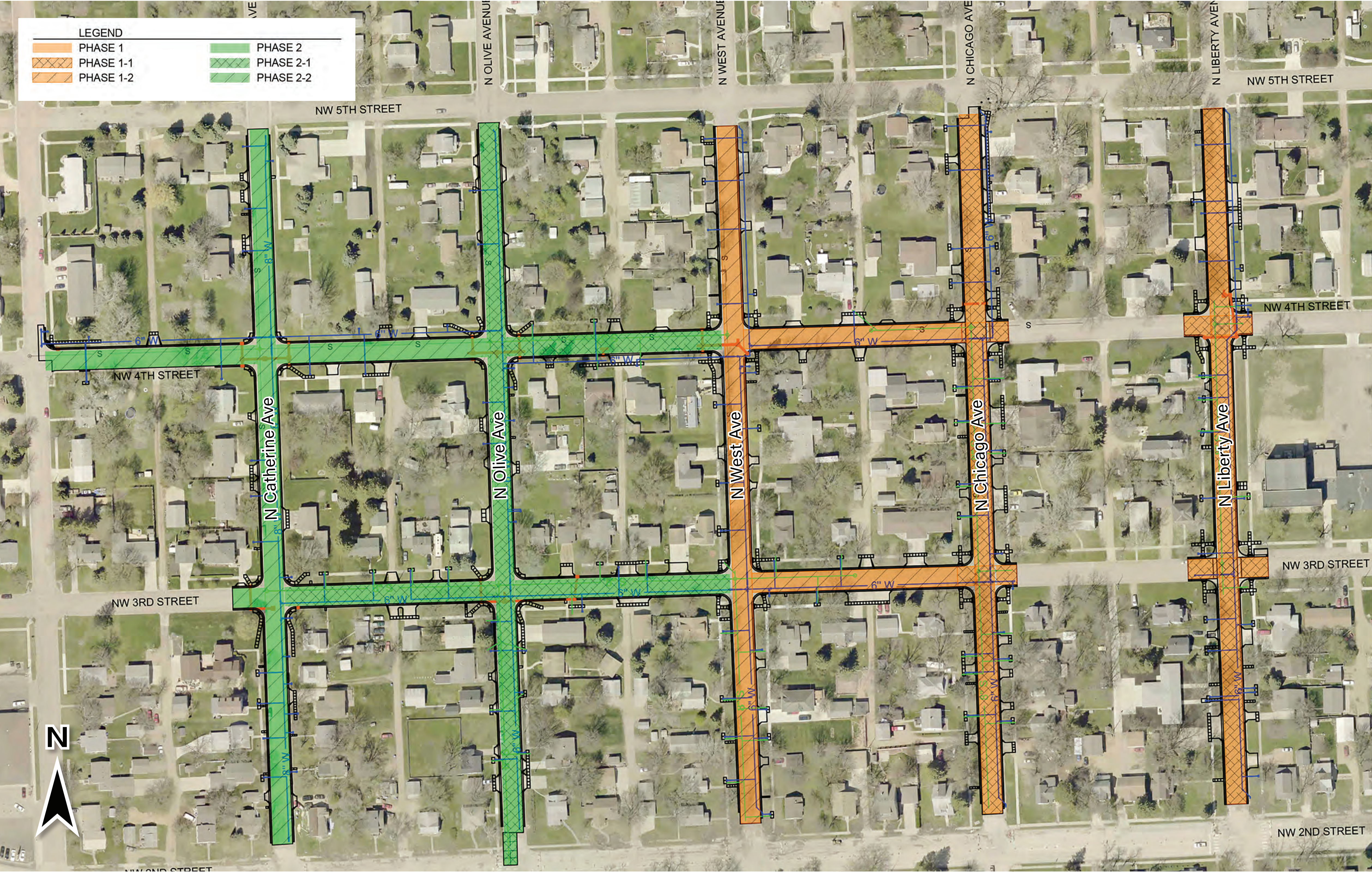
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WATER SYSTEM IMPROVEMENTS | PHASE 1A



OVERVIEW

This project includes water, sanitary sewer, and storm sewer utility replacement. Full width roadway reconstruction and partial sidewalk replacement is also part of this project. This is a multi-block project with improvements located in the west central part of Madison.

CURRENT STATUS

- Contractor will be working on punchlist throughout the 2023 season. Impact to residents will be minimal.

REMAINING WORK

- Surfacing restoration and replacement where defects have been identified.
- Boulevard restoration and re-seeding of 2021 construction areas.

SCHEDULE

- Resume Work: Estimated May 2023
- Deadline: June 2023

ROAD CLOSURES



- Shoulder closures and short term-road closures
- Driveway access may be interrupted during replacement or repair work on curb and gutter or driveway approaches.

TEMPORARY GARBAGE COLLECTION

Contractor and City to coordinate garbage pickup during times of road closures. Please call the Public Works Department for any questions about garbage pickup. (605) 256-7515



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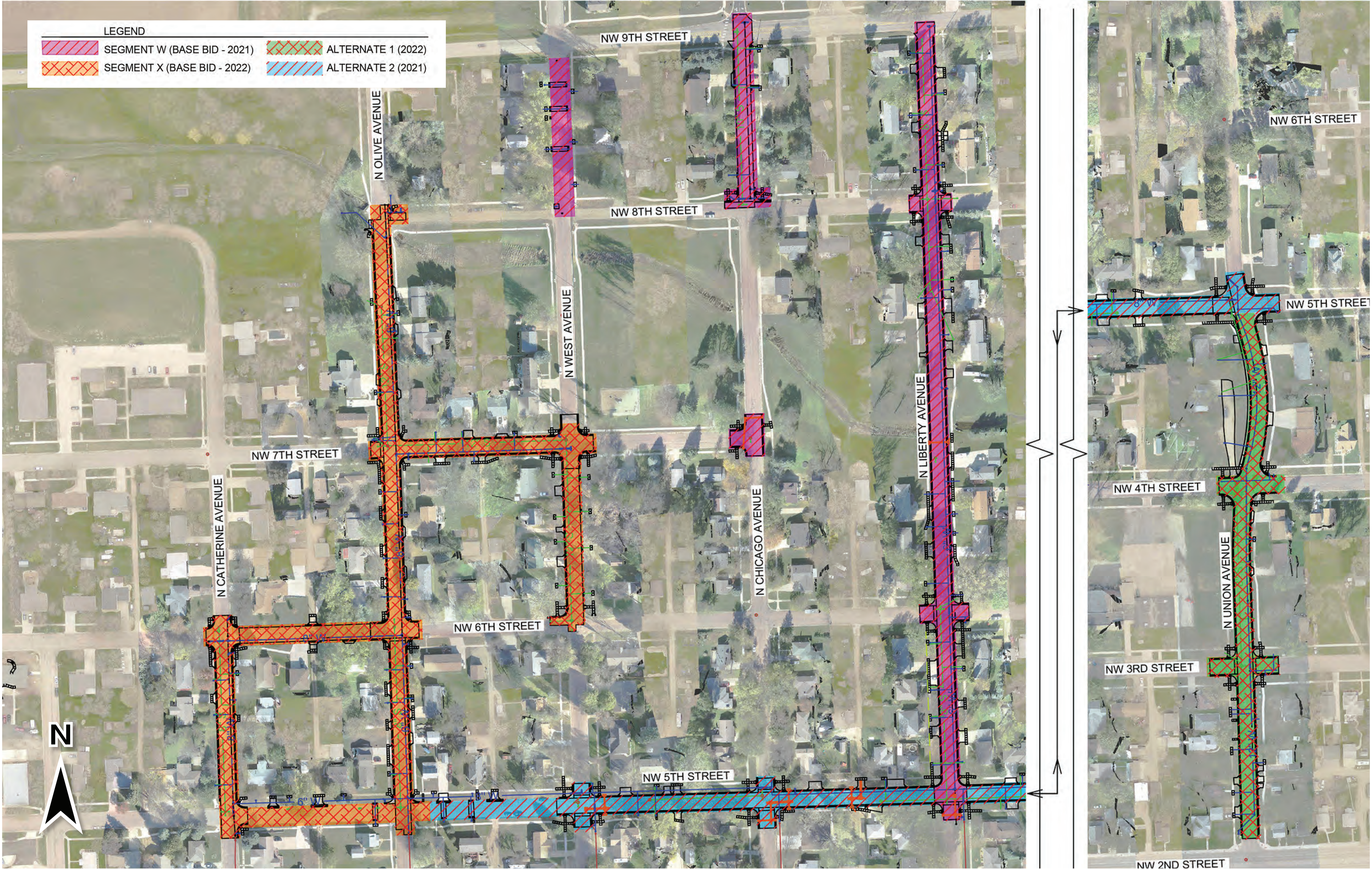


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WATER SYSTEM IMPROVEMENTS | PHASE 1B



OVERVIEW

This project includes water, sanitary sewer, and storm sewer utility replacement. Full width roadway reconstruction and partial sidewalk replacement is also part of this project. This is a multi-block project with improvements located in the northwest corner of Madison.

CURRENT STATUS

- Winter shutdown issued due to weather.
- Driveway approaches and sidewalk temporarily surfaced.

REMAINING WORK

- Road reconstruction, curb and gutter, valley gutter and fillets, sidewalk and pedestrian ramps, asphalt paving, punchlist, boulevard restoration, seeding, final walkthrough.

SCHEDULE

- Resuming Work: Estimated May 2023
- Contract Substantial Completion: October 2022

ROAD CLOSURES



- Minimum closure of 2 days for each block during paving.
- Driveway access will be limited during concrete work and roadway reconstruction.

TEMPORARY GARBAGE COLLECTION

Contractor and City to coordinate garbage pickup during times of road closures.

Please call the Public Works Department for any questions about garbage pickup.
(605) 256-7515



CONTACTS

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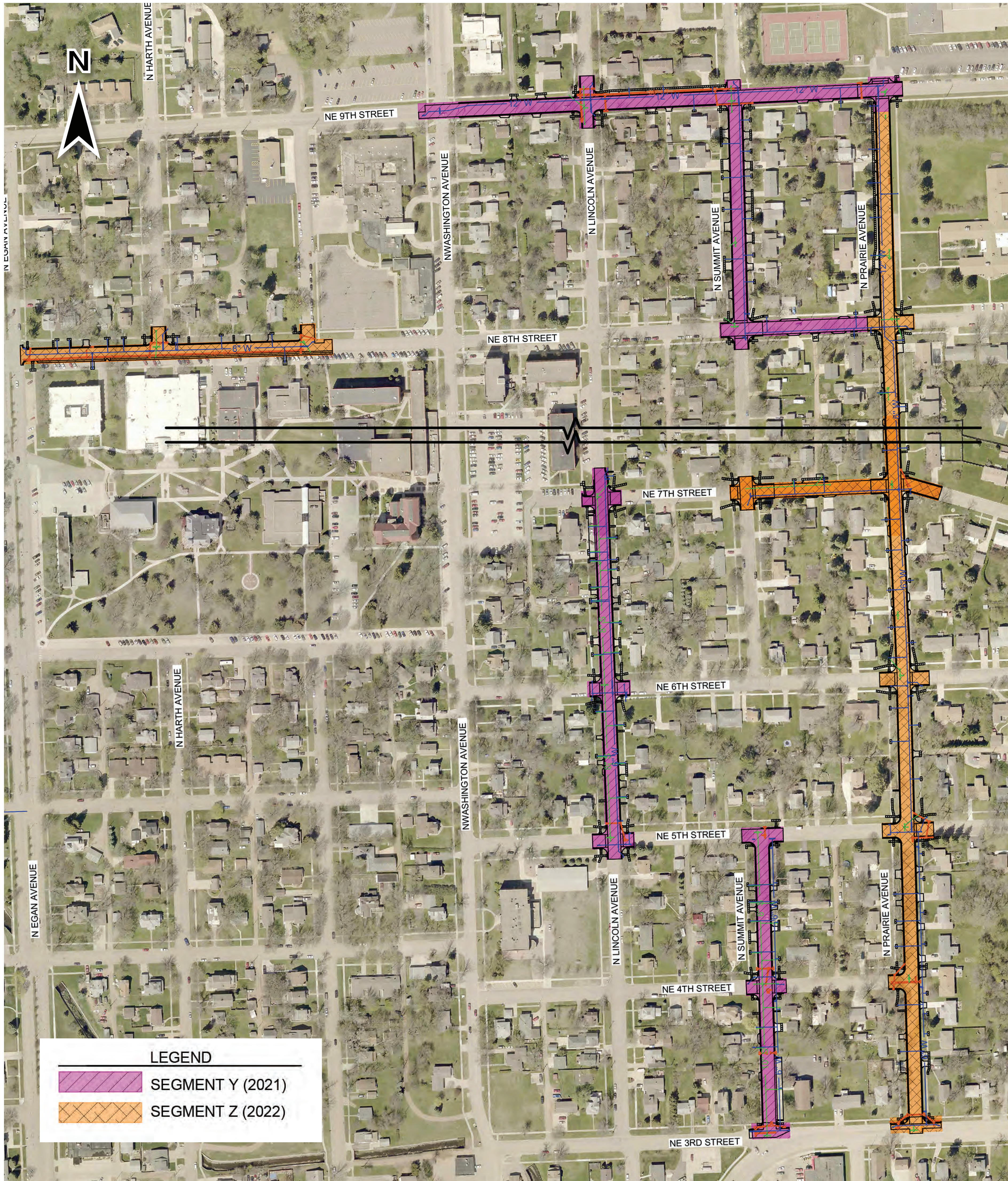


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WATER SYSTEM IMPROVEMENTS PHASE 2A



OVERVIEW

This project includes water, sanitary sewer, and storm sewer utility replacement. Full width roadway reconstruction and partial sidewalk replacement is also part of this project. This is a multi-block project with improvements in the northwest corner of Madison.

ROAD CLOSURES

- Shoulder closures and short term-road closures.
- Driveway access may be interrupted during replacement or repair work on curb and gutter or driveway approaches.



TEMPORARY GARBAGE COLLECTION

Contractor and City to coordinate garbage pickup during times of road closures.



Please call the Public Works Department for any questions about garbage pickup. (605) 256-7515



CURRENT STATUS

- Contractor will be working on punchlist throughout the 2023 season.
- Minimal impact to the residents expected.



REMAINING WORK

- Surfacing restoration and replacement where defects have been identified.
- Boulevard restoration and re-seeding of isolated areas.



SCHEDULE

- Resuming Work: Estimated May 2023
- Deadline: June 2023

CONTACTS



OWNER

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ENGINEER

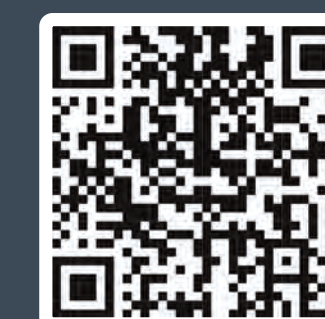
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CONTRACTOR

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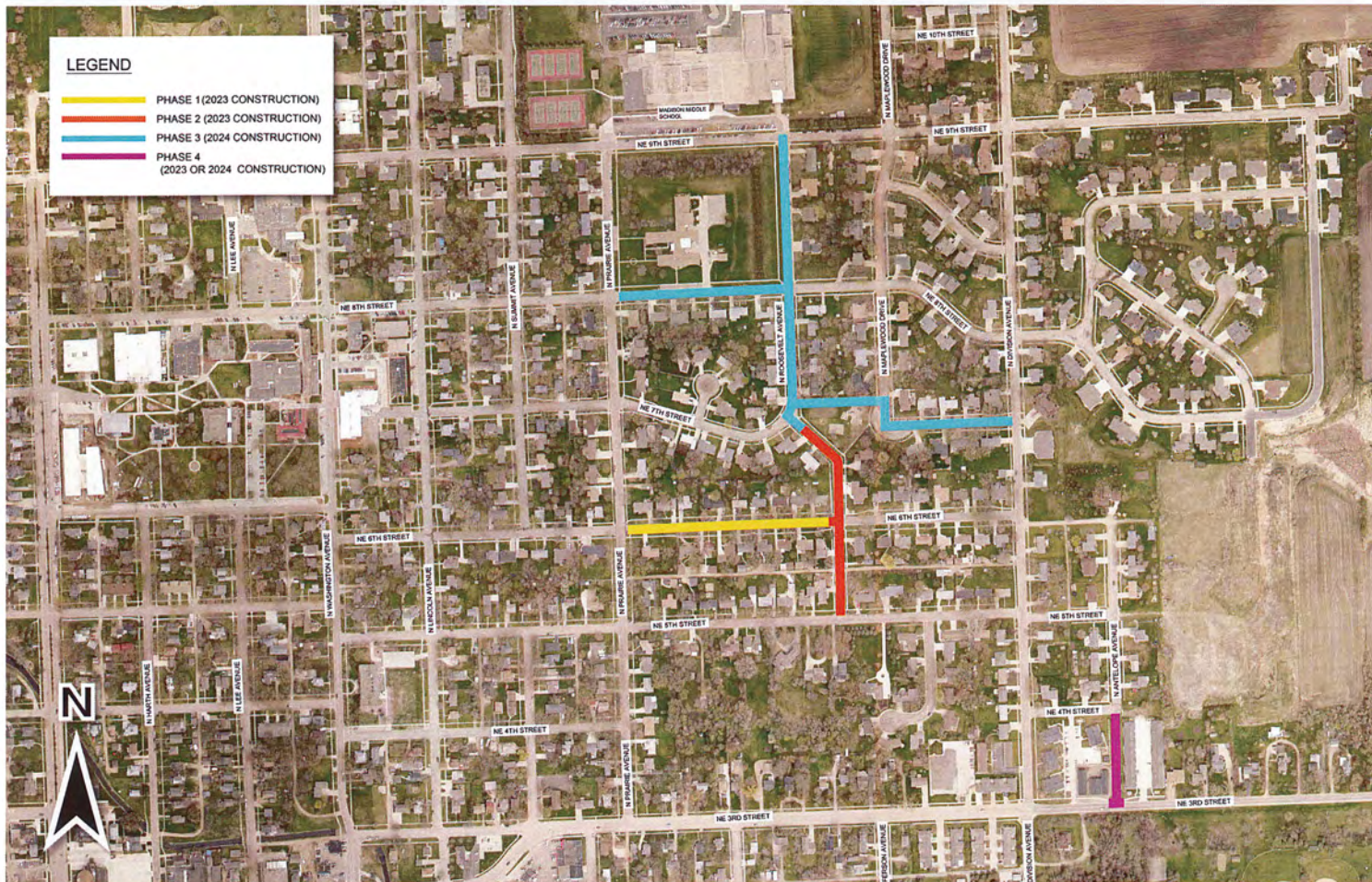
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WATER SYSTEM IMPROVEMENTS | SEGMENT 3



OVERVIEW

This project includes water, sanitary sewer, and storm sewer utility replacement. Segments of the project consist of full width roadway reconstruction while other segments consist of partial roadway, curb and gutter and sidewalk replacement. This is a multi-block project with improvements located in the northeast portion of Madison.

SCHEDULE

- Anticipated Start: July 2023
- Contract Substantial Completion Phases 1 & 2: October 2023
- All Work Substantial Completion: August 2024



ROAD CLOSURES

Road closures should be expected for the various project phases. Access will be limited to private residences.

Additionally:

- Two consecutive intersections will not be closed at one time.
- Intersections of Division Avenue/Maplewood Drive and 9th Street/Roosevelt Avenue will not be closed concurrently.
- Closures will be set up so residents will not walk more than one block to their homes.
- Middle school access will be affected.
- Alley access will be maintained.
- Sidewalk access will be maintained.



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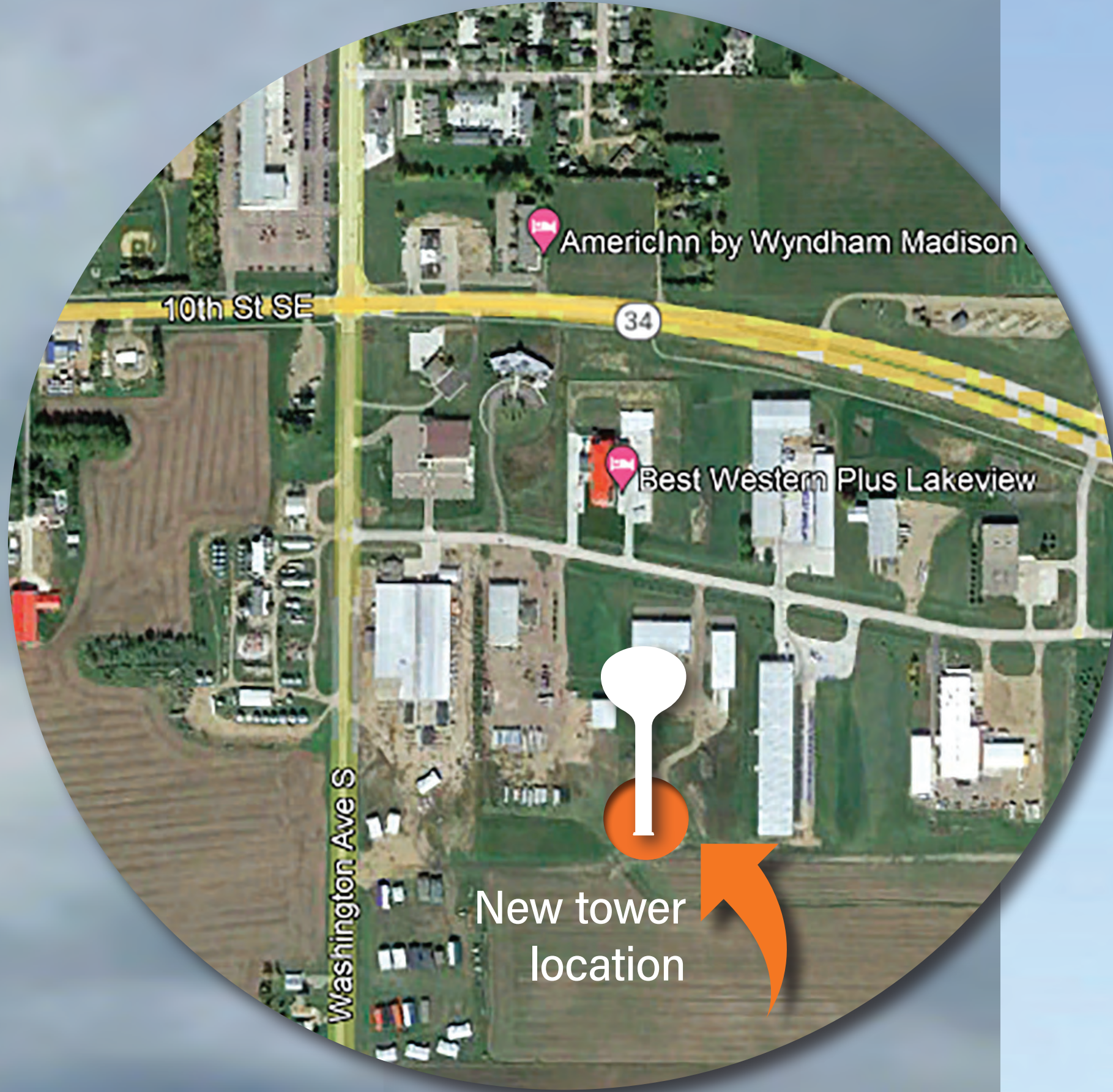


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Tower Painting - Spring of 2023

Tower Construction and Site Grading - Summer 2023

Final Completion - Fall 2023

