SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance Consent

AGENDA ITEM: 5 – I DATE: April 3-4, 2024

SUBJECT

USD - City of Vermillion Easement Resolution

CONTROLLING STATUTE, RULE, OR POLICY

SDCL 5-2-10 & 5-2-11.

BACKGROUND/DISCUSSION

The University of South Dakota (USD) requests that the Board adopt the Resolution set forth in Attachment I requesting the grant of easements to the City of Vermillion. The City of Vermillion is seeking two temporary construction easements over property belonging to SDBOR/USD, for the purpose of grading work associated with street upgrades and repairs. The grading work is being done on and adjacent to USD property at Clark and Harvard Streets (near the Lee Medical School building) and Clark and Pine Streets (near the College of Arts and Sciences building). USD will benefit from the improved roadways near its campus.

IMPACT AND RECOMMENDATION

USD requests the Board of Regents approve proceeding with the requested temporary easements for the above-mentioned purposes, as reflected in the attached exhibits.

Staff recommends approval.

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of Easements

Attachment I – Exhibit I, Draft Temporary Easement – Clark and Pine

Attachment I – Exhibit II, Draft Temporary Easement – Clark and Harvard (Med School)

DRAFT MOTION 20240403 5-I:

I move to approve and adopt the Resolution set forth in Attachment I, requesting the Commissioner of School and Public Lands to proceed with the easements as stated therein.

RESOLUTION

Resolution requesting the grant of easements through, under, in, on, and across portions of land occupied by the University of South Dakota for the use and benefit of the City of Vermillion.

The South Dakota Board of Regents (hereinafter referred to as "BOR"), on behalf of the University of South Dakota, pursuant to the authority vested in BOR under SDCL § 5-2-11 and other applicable law, hereby requests the Commission of School and Public Lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to grant to the City of Vermillion temporary easements to construct, reconstruct, modify, and replace concrete grading work and to provide the requisite access associated therewith, through, under, on, and across the following described real estate within the City of Vermillion, Clay County, South Dakota:

The East 15 feet of the South 22 feet, and the North 9 feet of the South 31 feet of the East 3 feet of Lot 1, Block 11, Bigelows University Addition, as further show in Exhibit D to Exhibit I, a copy of which is attached hereto and incorporated herein; and

The North 20 feet of Lot 7 and the North 20 feet of the East 10 feet of Lot 6, Block 67, Replat of Bigelows Addition University Plaza Replat, City of Vermillion, Clay County, South Dakota, as further shown in Exhibit E to Exhibit II, a copy of which is attached hereto and incorporated herein.

BOR requests that the easement be generally consistent with the drafts attached hereto as Exhibit I and II, without restricting the ability of the parties to further review the easements to effectuate their intended purposes before executing and filing the same, to include adjusting the easement locations to accommodate the final construction plans.

Dated this	_ day of April, 2024.	
SOUTH DAKOTA BOARD	OF REGENTS	
By:		
Tim Rave		
President		
Certification:		
I have compared the	foregoing with an action taken by the Board of Regents at its	
meeting conducted on the	day of April, 2024, and I hereby certify that the same is a tru	ıe
correct, and complete copy t	hereof and that the same has not been rescinded.	

Dated this day of April, 2024
SOUTH DAKOTA BOARD OF REGENTS
By
Doug Morrison Secretary

Prepared by:
AJ Franken
General Counsel
University of South Dakota
414 E Clark St.
Vermillion SD 57069

STATE OF SOUTH DAKOTA TEMPORARY EASEMENT

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the "State"] and the City of Vermillion , by and through its City Engineer, 25 Center Street, Vermillion, South Dakota, 57069 ["the City"].

WHEREAS, The City is desirous of retaining a temporary easement for the purpose of grading and replacing concrete, across land belonging to the State, and the State is desirous of cooperating with the City for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the City, a temporary easement for the following described purposes: the right to occupy during construction for purposes of grading and replacing concrete the the following legally described real estate within the City of Vermillion, Clay County, State of South Dakota (the "Easement Area"):

The East 15 feet of the South 22 feet, and the North 9 feet of the South 31 feet of the East 3 feet of Lot 1, Block 11, Bigelows University Addition,

as more fully described in "Exhibit D", a copy of which is attached hereto and incorporated herein by this reference.

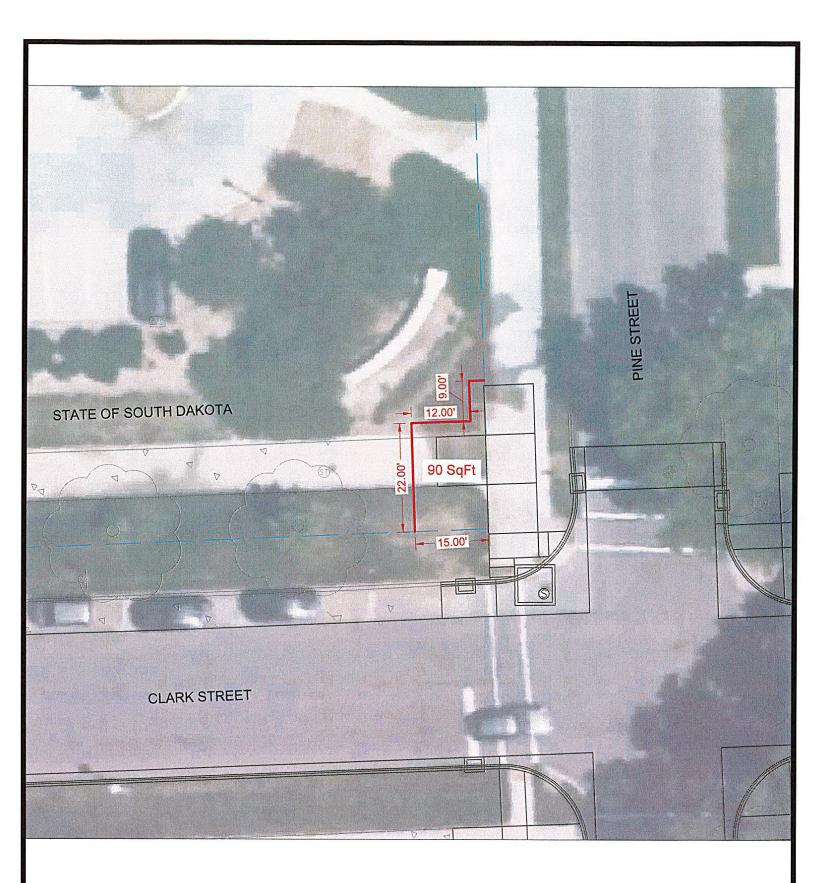
- 2. The easement shall expire on completion of the work.
- 3. The City agrees that any construction will not diminish nor interfere unnecessarily with the State's use of its adjoining property and will not endanger nor injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

- 4. The City further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the utilities or structures installed by the City and associated with the operation and maintenance of said utilities or structures.
- 5. The right of way, utilities, or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.
- 6. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
- 7. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction of the utilities or structures installed by the City, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
- 8. The City further understands and agrees that the State has and retains the right to lease, sell, or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, the above-described easement is subject to a reservation of further easements and rights-of-way for irrigation ditches and canals, as provided by South Dakota Codified Laws 5-4-2, so long as they do not infringe upon the rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 5-2-12, and in any law of the State of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.
- 9. City shall maintain the surface area of the Easement shown in Exhibit "A" following execution of this Easement. The property which is the subject of this Easement shall be kept free of all obstructions including but not limited to buildings, walls, fences, debris, trees, shrubs, or landscaping if such use is incompatible with the Easement.
- 10. This agreement and attachments shall constitute the entire agreement between the State and the City. This agreement supersedes any other written or oral agreements between the State and the City pertaining to the Easement Area, or any portion thereof. This agreement can be

- modified only in writing and signed by the State and the City or their respective heirs, representatives, executors, administrators, successors and assigns.
- 11. This Easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of City or any person or entity succeeding to its interest to comply with the conditions stated herein shall cause the Easement to terminate and to revert to the State or any person or entity succeeding to its interest.
- 12. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

IN WITNESS WHEREOF, the p the State, by the Governor and a			
the Grantee has set its hand and	seal this	day of	_, 2024.
\$	STATE OF S	OUTH DAKOTA	
E	BY:		
	Kristi Gover	Noem nor	
ATTEST:			
Brock Greenfield Commissioner of School and l	Public Lands	_	
CITY OF VERMILLION			
I			<u>—</u>
		rescott Ianager	
ATTEST:			

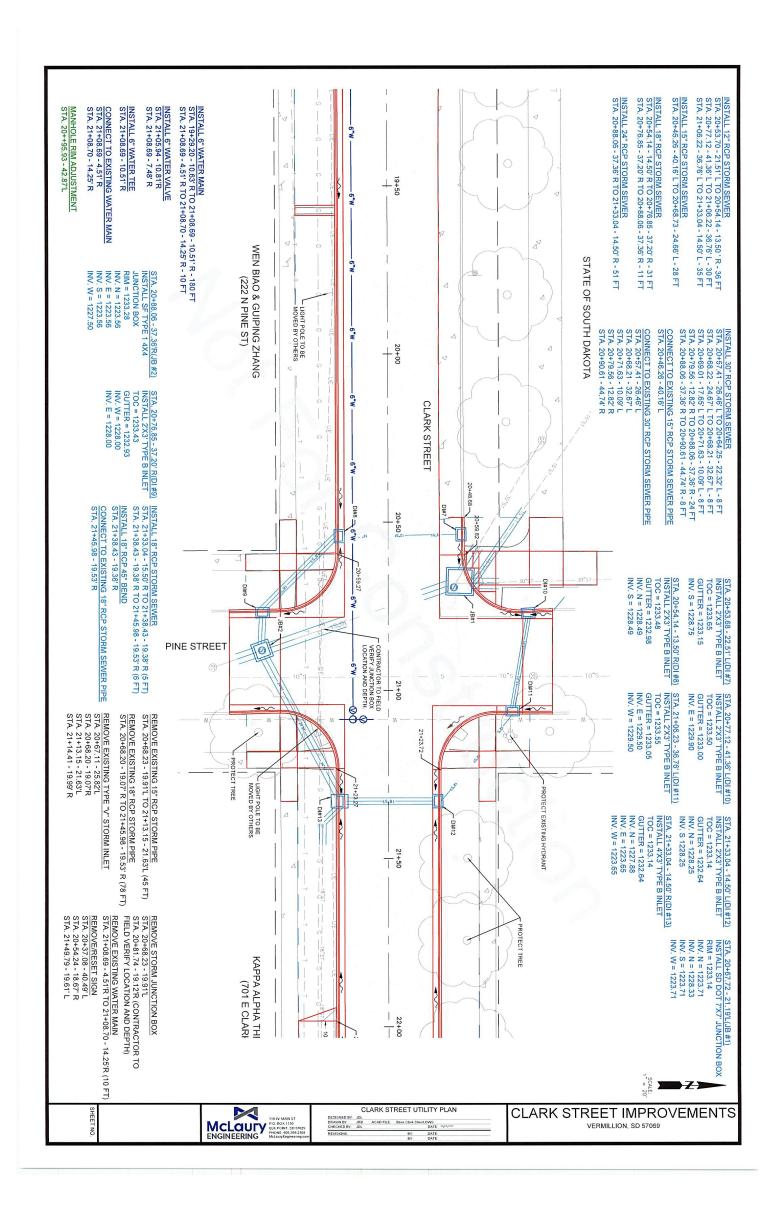
State of South Dakota)	
County of Hughes	: SS.	
within aforesaid County as be the person described he	nd State, pe erein and wl	, 2024, before me the undersigned Notary Public ersonally appeared Kristi Noem, Governor, known to me to ho executed the within and foregoing instrument for the owledged to me that she executed the same.
(SEAL)		Notary Public – State of South Dakota My Commission Expires:
State of South Dakota) : SS.	
County of Hughes)	
Public Lands, known to m	e to be the he purposes	y appeared Brock Greenfield, Commissioner of School and person described herein and who executed the within and a therein contained and acknowledged to me that he Notary Public – State of South Dakota
(SEAL)		My Commission Expires:
State of South Dakota) : SS.	
County of Clay)	
within aforesaid County as of Vermillion known to m	nd State, pe e to be the	, 2024, before me the undersigned Notary Public ersonally appeared John Prescott, City Manager of the City person described herein and who executed the within and as therein contained and acknowledged to me that he
(SEAL)		Notary Public – State of South Dakota My Commission Expires:



Temporary Construction Easement: Exhibit D

UNIVERSITY OF SOUTH DAKOTA (STATE OF SOUTH DAKOTA) 414 E Clark Street Vermillion, SD 57069





Prepared by:
AJ Franken
General Counsel
University of South Dakota
414 E Clark St.
Vermillion SD 57069

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as more fully described in "Exhibit E", a copy of which is attached hereto and incorporated herein by this reference.

- 2. The easement shall expire on completion of the work.
- 3. The City agrees that any construction will not diminish nor interfere unnecessarily with the State's use of its adjoining property and will not endanger nor injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or the City may enter upon the

- above described property for the purposes of effectuating the grant of and reserved rights in this easement.
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- 5. The right of way, utilities, or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.
- 6. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the State to continue use of any existing utilities, access, or State infrastructure. Existing utilities, access, or infrastructure may be relocated with State's permission at the City's expense.
- 7. The City further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by construction of the utilities or structures installed by the City, and the City agrees to indemnify, defend, and hold the State harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City. City may require contractors and permittees, to defend, indemnify and hold City whole and harmless from costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, operation of construction, or permitted facilities by such contractor or permittee in or near the Easement. Nothing in this agreement shall be read to waive the State's sovereign immunity.
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- 12. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

	ts hand and seal this day of	, 2024.
	STATE OF SOUTH DAKOTA	
	BY:	
	Kristi Noem	
	Governor	
ATTEST:		
TILDI.		
Brock Greenfield	School and Public Lands	
Commissioner of	school and Fuolic Lands	
CITY OF VERMII	LLION	
CITY OF VERMII		
CITY OF VERMII	LLION BY: John Prescott	

State of South Dakota)	
County of Hughes	: SS.	
be the person described he	erein and w	, 2024, before me the undersigned Notary Public ersonally appeared Kristi Noem, Governor, known to me to who executed the within and foregoing instrument for the owledged to me that she executed the same.
(SEAL)		Notary Public – State of South Dakota My Commission Expires:
State of South Dakota) : SS.	
County of Hughes)	
		Poperson described herein and who executed the within and est herein contained and acknowledged to me that he Notary Public – State of South Dakota My Commission Expires:
State of South Dakota) : SS.	
County of Clay)	
within aforesaid County a of Vermillion known to m	nd State, p e to be the	, 2024, before me the undersigned Notary Public ersonally appeared John Prescott, City Manager of the City person described herein and who executed the within and es therein contained and acknowledged to me that he
(SEAL)		Notary Public – State of South Dakota My Commission Expires:



Temporary Construction Easement: Exhibit E

UNIVERSITY OF SOUTH DAKOTA (STATE OF SOUTH DAKOTA)
414 E Clark Street
Vermillion, SD 57069



