

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance
Consent

AGENDA ITEM: 4 – J
DATE: August 7-8, 2019

SUBJECT

Clay Rural Water Systems, Inc. Easement Resolution (USD)

CONTROLLING STATUTE, RULE, OR POLICY

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

BACKGROUND / DISCUSSION

Clay Rural Water Systems, Inc. is seeking an easement for an existing water transmission / distribution pipeline across a portion of the land occupied by the University of South Dakota (USD) in Clay County. The location of the water pipeline does not unnecessarily interfere with USD’s use of the land.

IMPACT AND RECOMMENDATION

USD requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of an easement to Clay Rural Water Systems, Inc. to erect, construct, reconstruct, replace, repair, use, maintain, and operate a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such water pipeline. The foregoing will allow Clay Rural Water Systems, Inc. to locate and/or maintain a portion of its water pipeline on USD’s property in Clay County.

Staff recommends approval.

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of an Easement to Clay Rural Water Systems, Inc.

Attachment I, Exhibit I – Draft Easement to Clay Rural Water Systems, Inc.

DRAFT MOTION 20190807_4-J:

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 easement as stated therein.

RESOLUTION**Resolution requesting the grant of an easement through, under, in, on and across portions of land occupied by the University of South Dakota for the use and benefit of Clay Rural Water Systems, Inc.**

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of the University of South Dakota, in consideration of two thousand dollars (\$2,000.00) and other good and valuable consideration, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the Commissioner of School and Public Lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to ratify, effectuate, or grant to Clay Rural Water Systems, Inc., an easement to erect, construct, reconstruct, replace, repair, use, maintain, and operate a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such water pipeline through, under, in, on and across the following legally described real estate within the Clay County:

A strip of land thirty (30) feet in width, consisting of fifteen (15) feet on either side of the center line of the pipeline as constructed, and insofar as possible the center line shall be fifteen (15) feet inside of the fence line which fence line is the boundary of the property of the STATE, situated in THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 12, TOWNSHIP 92, RANGE 52

as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated into this agreement, the same as if written at length herein.

Grantor requests that any ratification, effectuation, or grant of easement be consistent with, or responsive to, the issues identified in the draft grant of easement prepared by the Office of School and Public Lands and attached hereto as Exhibit I, without restricting the ability of the parties to further revise, negotiate, and finalize the details of the final document(s).

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

Dated this ____ day of August, 2019

SOUTH DAKOTA BOARD OF REGENTS

By _____

Kevin V. Schieffer

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board on the ____ day of August, 2019, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this ____ day of August, 2019

SOUTH DAKOTA BOARD OF REGENTS

By _____

James Morgan

Secretary

**This document prepared by:
Office of School and Public Lands
(605)773-3303
500 East Capitol Avenue
Pierre, South Dakota 57501-5070**

**STATE OF SOUTH DAKOTA
PERMANENT EASEMENT**

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the “State”] and between Clay Rural Water Systems, Inc., 30376 SD Hwy 19, Wakonda, South Dakota, 57073 [“Clay Rural Water”].

WHEREAS CLAY Rural Water is desirous of acquiring a permanent easement for the purpose of constructing and maintaining a potable water transmission or distribution pipeline and related facilities above and below the surface of the proposed easement area upon land belonging to the State, and the State is desirous of cooperating with Clay Rural Water for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of Two Thousand Dollars (\$2,000.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to Clay Rural Water a permanent easement for the following described purposes: the right to erect, construct, reconstruct, replace, repair, use, maintain, and operate a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such water pipeline through, under, in, on and across the following legally described real estate within the County of Clay, State of South Dakota (the “Easement Area”):

A strip of land thirty (30) feet in width, consisting of fifteen (15) feet on either side of the center line of the pipeline as constructed, and insofar as possible the center line shall be fifteen (15) feet inside of the fence line which fence line is the boundary of the property of the STATE, situated in THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 12, TOWNSHIP

92, RANGE 52, as further shown in Exhibit A, a copy of which is attached hereto and incorporated into this agreement, the same as if written at length herein.

2. Clay Rural Water agrees that any construction will not interfere unnecessarily with the State's use of its adjoining property and will not endanger or injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or Clay Rural Water may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. Clay Rural Water further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the water pipeline and other utilities or structures installed by Clay Rural Water and associated with the operation and maintenance of said pipeline.

4. Clay Rural Water further understands and agrees, that to the extent provided by South Dakota law it shall be liable for all damages caused by the construction, operation, maintenance, enlargement, upgrade, repair, alteration, removal or replacement of the water pipeline and other utilities or structures installed by Clay Rural Water and associated with the operation and maintenance of said pipeline and Clay Rural Water agrees to indemnify, defend, and hold the State harmless for the same. Nothing in this agreement shall be read to waive Grantor's sovereign immunity.

5. Clay Rural Water further understands and agrees that the State has and retains the right to lease, sell or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, the above-described easement is subject to a reservation of further easements and rights-of way for irrigation ditches and canals, as provided by South Dakota Codified Laws 5-4-2, so long as they do not infringe upon the rights granted hereunder. This Easement is also subject to a reservation of rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII, §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 5-2-12, and in any law of the State of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.

6. In consideration of this Easement, Clay Rural Water will not impose special assessments on the State to pay for connection costs to Clay Rural Water that may be associated with the development of the above describe area.

7. The land herein described is to be used for the water pipeline and other utilities or structures associated with the operation and maintenance of said pipeline and no other purpose whatsoever, and that should the above described real property granted by this Easement cease to be used for said purposes for two consecutive years, this Easement reverts to the State or its successor and assigns.

8. This agreement and attachments shall constitute the entire agreement between the State and Clay Rural Water. This agreement supersedes any other written or oral agreements between the State and Clay Rural Water pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and Clay Rural Water or their respective heirs, representatives, executors, administrators, successors and assigns.

9. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto.

10. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota.

11. This Easement shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Easement on this ____ day of _____, 2019.

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Ryan Brunner
Commissioner of School and Public Lands

CLAY RURAL WATER
SYSTEMS, INC.

BY: _____

ATTEST:

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2019, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2019, before me the undersigned Notary Public within aforesaid County and State, personally appeared Ryan Brunner, Commissioner of South Dakota School and Public Lands, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

EXHIBIT A

LOCATED IN EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 92, RANGE 52, CLAY COUNTY SD

