

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

Consent

AGENDA ITEM: 6 – K

DATE: August 3-5, 2021

SUBJECT

City of Brookings Easement – Research Park at SDSU

CONTROLLING STATUTE, RULE, OR POLICY

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

BACKGROUND / DISCUSSION

City of Brookings is seeking a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of water and sewer utilities and all necessary and appurtenant of structures, fixtures and controls. This easement is located on real property leased by South Dakota State University Growth Partnership, LTD., operator of the Research Park at South Dakota State University. The request for easement is consistent with the terms of the Amended and Restated Master Ground Lease Agreement dated December 6, 2016, by and between the BOR and SDSU Growth Partnership, LTD.

IMPACT AND RECOMMENDATION

Pursuant to Section 1.3 of the Amended and Restated Master Ground Lease Agreement, South Dakota State University Growth Partnership, LTD. requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of an easement to the City of Brookings to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate water and sewer utilities, and all necessary and appurtenant of structures, fixtures and controls.

Staff recommends approval.

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of an Easement to the City of Brookings

Attachment I, Exhibit I – Draft Easement to the City of Brookings

DRAFT MOTION 20210803_6-K:

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 leased by South Dakota South Dakota State University Growth Partnership, LTD., operator of the Research Park at South Dakota State University, for the use and benefit of the City of Brookings.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of the South Dakota State University Growth Partnership, LTD., operator of the Research Park at South Dakota State University, in consideration of one dollar (\$1) 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 grant to the City of Brookings, an easement to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate water and sewer utilities, and all necessary and appurtenant structures, fixtures and controls, as further described in Exhibit I, through, under, in, on and across the following described real estate within Brookings County:

A strip of land 30 feet wide over, under and across Lot 4 of Block 1 of SDSU Innovation Campus Addition to the City of Brookings, Brookings County, State of South Dakota, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein.

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

Grantor requests that any 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, 2021.

SOUTH DAKOTA BOARD OF REGENTS

By _____

John W. Bastian

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Pierre, South Dakota, on the ____ day of August, 2021, 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, 2021.

SOUTH DAKOTA BOARD OF REGENTS

By _____

Jim Thares

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 West River Electric Association, Inc., (hereinafter referred to as Cooperative) of P.O. Box 412, Wall, SD 57790 ["the Cooperative"].

WHEREAS, The Cooperative is desirous of acquiring a right-of-way easement for to survey, construct, reconstruct, upgrade, replace, operate and maintain, repair, alter, inspect, remove and enhance underground or overhead transmission and/or distribution lines and associated equipment owned by Cooperative and all necessary attachments and appurtenances, upon, under, and across land belonging to the State, and the State is desirous of cooperating with the Cooperative 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 Cooperative a right-of-way easement for the following described purposes: the right to survey, construct, reconstruct, upgrade, replace, operate and maintain, repair, alter, inspect, remove and enhance underground or overhead transmission and/or distribution lines and associated equipment owned by Cooperative and all necessary attachments and appurtenances, upon, under, and across, and including reasonable ingress and egress over adjacent lands of the State to provide access to, the following legally described real estate within the county of Meade, State of South Dakota (the "Easement Area"):

The S $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ less R.O.W., located in Section 3, Township 5N, Range 6E, BHM., Meade County, South Dakota, as further shown in WCEA Map #35787 a copy of which is attached hereto as "Exhibit A" and incorporated herein.

2. The Cooperative 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 the Cooperative may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. The Cooperative 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 Cooperative and associated with the operation and maintenance of said utilities or structures. This includes the right to cut, control, manage with approved herbicides, and trim trees and vegetation along said lines where necessary to secure all clearance from conductors for the entire width of the Easement Area, and to further cut down and remove all dead, weak, leaning or hazardous tress that may strike or interfere with the distribution line(s). Any poles, wire, and other facilities, including any main service entrance equipment, installed on the Easement Area at the Cooperative's expense shall remain the property of the Cooperative, and shall be removed at by the Cooperative upon termination of service to or on said lands, unless otherwise agreed to by the State. In the event the Cooperative damages any growing crops, pastures, fences or building of the State as a result of exercising its rights granted herein, the Cooperative shall pay the State for the damage caused. If the State and Cooperative cannot mutually agree on the amount of said damages, the same shall be ascertained and determined by three disinterested individuals, one thereof appointed by the State, one by the Cooperative, and the third by the two so appointed.

4. The Cooperative 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 utilities or structures installed by the Cooperative and associated with the operation and maintenance of said utilities or structures, and the Cooperative 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. The Cooperative 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, the Cooperative will not impose special assessments on the State to pay for connection costs to the Cooperative that may be associated with the development of the above described area.

7. The land herein described is to be used for the utilities or structures associated with the operation and maintenance of electrical services 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 the Cooperative. This agreement supersedes any other written or oral agreements between the State and The Cooperative pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and the Cooperative 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 _____, 20__.

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Ryan Brunner
Commissioner of School and Public Lands

WEST RIVER ELECTRIC
ASSOCIATION, INC.

BY: _____

ATTEST:

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ___ day of _____, 20___, 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 she executed the same.

Notary Seal

Notary Public – State of SD

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ___ day of _____, 20___, 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.

Notary Seal

Notary Public – State of SD

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF _____)

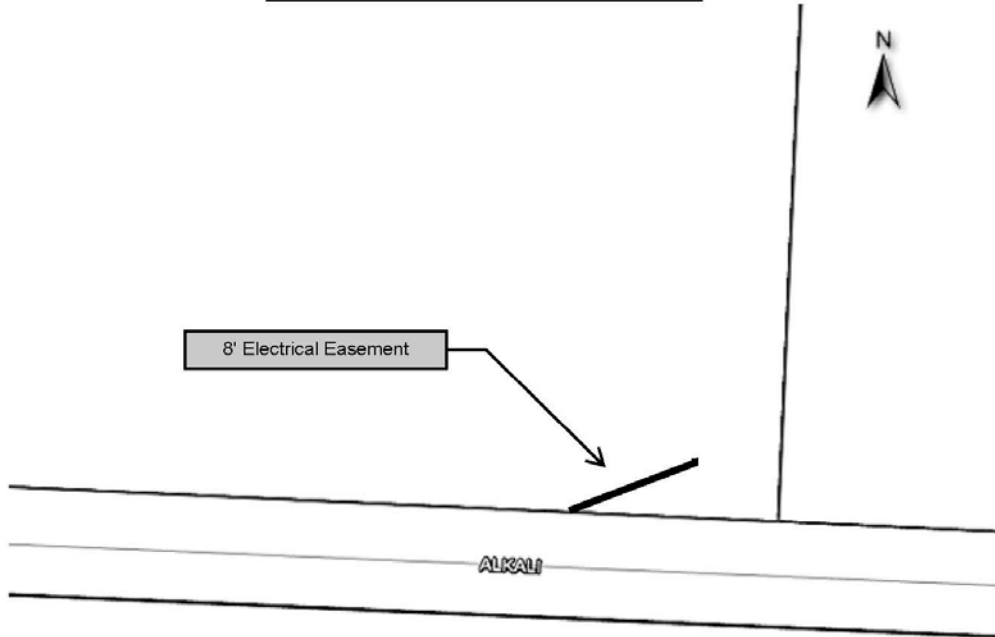
On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of the West River Electric Association, Inc., and that s/he, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the West River Electric Association, Inc., as _____.

Notary Seal


Notary Public – State of SD

Commission Expires

EXHIBIT A
WREA Doc. # 35787
Land Owner: State of South Dakota
By & Through Board Of Regents



West River Electric Association, Inc.

A Touchstone Energy® Partner 

DISCLAIMER: The information contained in this document was NOT obtained using a Registered Land Surveyor, therefore its use is for informational purposes only. 02/15/2021