



Bismarck Airport

DATE: 7/7/2021

FROM: Gregory Haug, Airport Director

ITEM:

Agenda item for July 13, 2021, Capital Electric Cooperative, Inc.

REQUEST:

Approve a utility easement for Capital Electric Cooperative, Inc.

Please place this item on the July 13, 2021 City Commission meeting agenda.

BACKGROUND INFORMATION:

Capital Electric requested a 10 foot wide easement on Bismarck Airport property (Lot 1 Block 16 Bismarck Airport Addition) on the east side of Yegan Road just North of Lincoln Road (see Exhibit A of Enclosure 1). The easement will allow Capital Electric to place easement utility wires underground. The easement language requires Capital Electric to move the utility wires at their expense if required for Airport development. The easement language is the same boilerplate previously approved by the Board on an earlier easement with Capital Electric. The language has been adjusted for this specific easement.

RECOMMENDED CITY COMMISSION ACTION:

Approve the easement at Enclosure 1.

STAFF CONTACT INFORMATION:

Greg Haug | Airport Director, 355-1800 or ghaug@bismarcknd.gov

ENCLOSURE:

1. Utility Easement

ON JULY 13, 2011
Appendix A

CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and CAPITAL ELECTRIC COOPERATIVE, INC.

Purpose of Contract: REQUESTED UTILITY EASEMENT ON LOT 1 Block 16, BISMARCK AIRPORT ADDITION

Contract Amount: \$25

Contract Period: 99 YEAR EASEMENT

Funding Source: NA

Project Number: (If needed, send copy to Fiscal) NA

Comments: SAME BOILER PLATE AS PREVIOUS EASEMENT WITH CAPITAL ELECTRIC THAT WAS APPROVED BY THE BOARD.

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

FINANCE

Comments:

Director of Finance Signature:

Date:

ADMINISTRATION

City Administrator Signature:

Date:

Please send copy of completed contracts to Administration.

ENCL 1

RECORDING INFORMATION ABOVE

R/W# _____

EASEMENT AGREEMENT

This easement agreement made and entered into by and between the City of Bismarck, a Municipal Corporation, acting through its Board of City Commissioners, hereinafter, "Grantor" and CAPITAL ELECTRIC COOPERATIVE, INC., an ELECTRIC COOPERATIVE authorized to do business in the State of North Dakota, having its principal offices at 4111 State Street, Bismarck, ND 58501, hereinafter, "Grantee".

WITNESSETH:

WHEREAS, the Grantor is the operator of the premises known as the Bismarck Municipal Airport located in Bismarck, North Dakota.

WHEREAS, the Grantee desires an easement from the Grantor to construct, reconstruct, modify, change, add to, operate, maintain and remove such underground electric utilities and appurtenances, from time to time, as may be required upon, over, under and across the land, described in Exhibit "A" to this easement, which is situated in the County of Burleigh, State of North Dakota, which the Grantor owns, to wit:

**SEE "EXHIBIT A" (Certificate of Survey - located in SW1/4 Sec 13,138-80)
ATTACHED HERETO
and
BY THIS REFERENCE MADE A PART HEREOF.**

NOW THEREFORE, in consideration of the terms, conditions, and covenants hereinafter set forth, the parties agree as Follows:

The Grantor covenants that he/she/they is/are the fee simple owner of said land or in which the Grantor has any interest and will warrant and defend title to the land against all claims.

The Grantor, for and in consideration of twenty-five dollars (\$25.00) and other good and valuable consideration (pair of fiber cable), the receipt whereof is hereby acknowledged, does hereby grant and convey unto Grantee an easement for a term of 99 years as described herein.

The Grantor agrees to allow this right-of-way to be used during all periods of construction, reconstruction, reinforcement, operation/maintenance and removal upon a strip of land ten (10) feet wide as described in this easement. The Grantee shall have the right of ingress and egress over and across the lands of the Grantor to and from the above described property and the right to clear and keep cleared all trees and obstructions as may be necessary for the Grantee's use and enjoyment of the easement area. Ingress and egress to the area(s) of the easement for construction, maintenance and operation purposes shall be coordinated with and through the Airport Manager or his Designee and be subjected to all airport security regulations.

Any land disturbed during the initial construction or subsequent reconstruction, operation and maintenance or removal of utilities within the easement area referenced herein by Grantee, its contractors, successors or assigns, will be restored to the satisfaction of the Airport Manager or his Designee. The Grantee shall have no responsibility for pre-existing environmental contamination or liabilities.

It is understood that the granting of this easement will not prevent the Grantor's use of the easement property for other utilities, future developmental needs, or for access to the Grantor's remaining property. In the event that the Grantors use or development of the property requires that Grantee relocate their utilities, such will happen at the Grantor's request and at the expense of Grantee.

The Grantee will be required to update the Airport's Master Utility Plan with information on actual, in-place utility lines and facilities (new or modified) on, across and within Airport Property. This information shall include accurate locations of utility lines and facilities, sizes and types of each utility line and facility and the number of each type and size at each location. The source of this information shall include accurate field surveys and "Record Drawings" of in-place utility lines and facilities. Surveys shall be based on the North Dakota State Plane Coordinate System.

An update to this easement and the Airports Master Utility Plan will be required for new installations and for each addition to or modification of utility lines or facilities. If the Grantor allows utility lines or facilities to be abandoned in place, the Grantee will be required to perform an update of the Airport's Master Utility Plan as described herein, showing the utility line or facility as abandoned in place.

Each update of the Airport's Master Utility Plan shall be coordinated with, and through the Grantor or Grantor's Designee. The Grantee shall bear all costs associated with each update.

The Grantee will not assign or transfer this easement in whole or in part, without the written consent of the Grantor. Such consent shall not be unreasonably withheld, provided, that, any such assignee shall be professionally qualified to operate natural gas facilities, acceptable to the City, possess sufficient financial resources and security to assure compliance with all the terms and conditions of this Easement.

This easement shall be subject to the terms of any "Airport Sponsors" Grantor's assurances and agreements now existing, required or imposed in the future between the Grantor and the Federal Aviation Administration or any successor federal agency.

The Grantee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or he otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the Grantor shall have the right to terminate the easement and to re-enter and repossess said land and the facilities thereon, hold the same as if said easement had never been made or issued.

The Grantee, its contractors and assigns, shall also during the terms of this easement subscribe and comply with the Worker's Compensation Laws of North Dakota, if applicable, and save Grantor harmless from any and all liability arising from or under said Act.

It is agreed that Grantee will, at all times, comply with all Federal, State and City rules and regulations now existing, or hereafter adopted, that govern the use and operation of the Bismarck Municipal Airport.

By acceptance of this easement, Grantee hereby agrees to defend, indemnify, and hold harmless Grantor, its officers, agents and employees from any and all claims, demands, damages, obligations, suits, penalties, causes of action, losses, liabilities or costs any time received, incurred, or accrued by Grantor, its officers, agents and employees, as a result of or arising out of the existence of or exercise of the rights or obligations of Grantee under

this easement, except as may arise from the active negligence or willful misconduct of Grantor, its officers, agents, or employees.

The Grantee, as a material part of the consideration to be rendered to Grantor under this easement, hereby waives all claims or causes of action against Grantor, its officers, agents or employees which it may now or hereafter have for damages to goods, wares, merchandise or other property in, about or upon the Bismarck Municipal Airport, and for injuries or death to persons in or about said airport, from any cause or causes arising at any time, except as may arise from the active negligence or sole willful misconduct act of Grantor, its officers, agents or employees, and notwithstanding that liability might otherwise be imposed on Grantor.

The rights, conditions, and provisions of this easement shall insure to the benefit of and be binding upon the heirs, executors, administrators, successor and assigns of the respective parties hereto.

The term "active negligence", as used herein, for all the purposes hereof, shall be construed to only mean the following: When Grantor, its officers, agents or employees, has or have directly participated in an affirmative act of negligence in connection with the maintenance and operation of the airport facilities.

Any claim, controversy or dispute arising out of this agreement shall be settled by arbitration in accordance with applicable rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in the country where the property is located.

GRANTOR

DATED: _____

RECOMMENDED APPROVAL
TERMS AND CONDITIONS BY:

Gregory B. Haug
Airport Manager

APPROVED AS TO FORM
AND LEGALITY BY:

Janelle Combs
City Attorney

ATTEST:

CITY OF BISMARCK

Keith Hunke
City Administrator

Steve Bakken
President, Board of City Commissioners

Subscribed and sworn to before me
this _____ day of _____, 20__.

NOTARY PUBLIC

PRINTED NAME
State of North Dakota
My Commission expires: _____

GRANTEE

Dated: _____

Capital Electric Cooperative, Inc.
COMPANY

ATTEST:

SIGNATURE

SIGNATURE

PRINTED NAME

PRINTED NAME

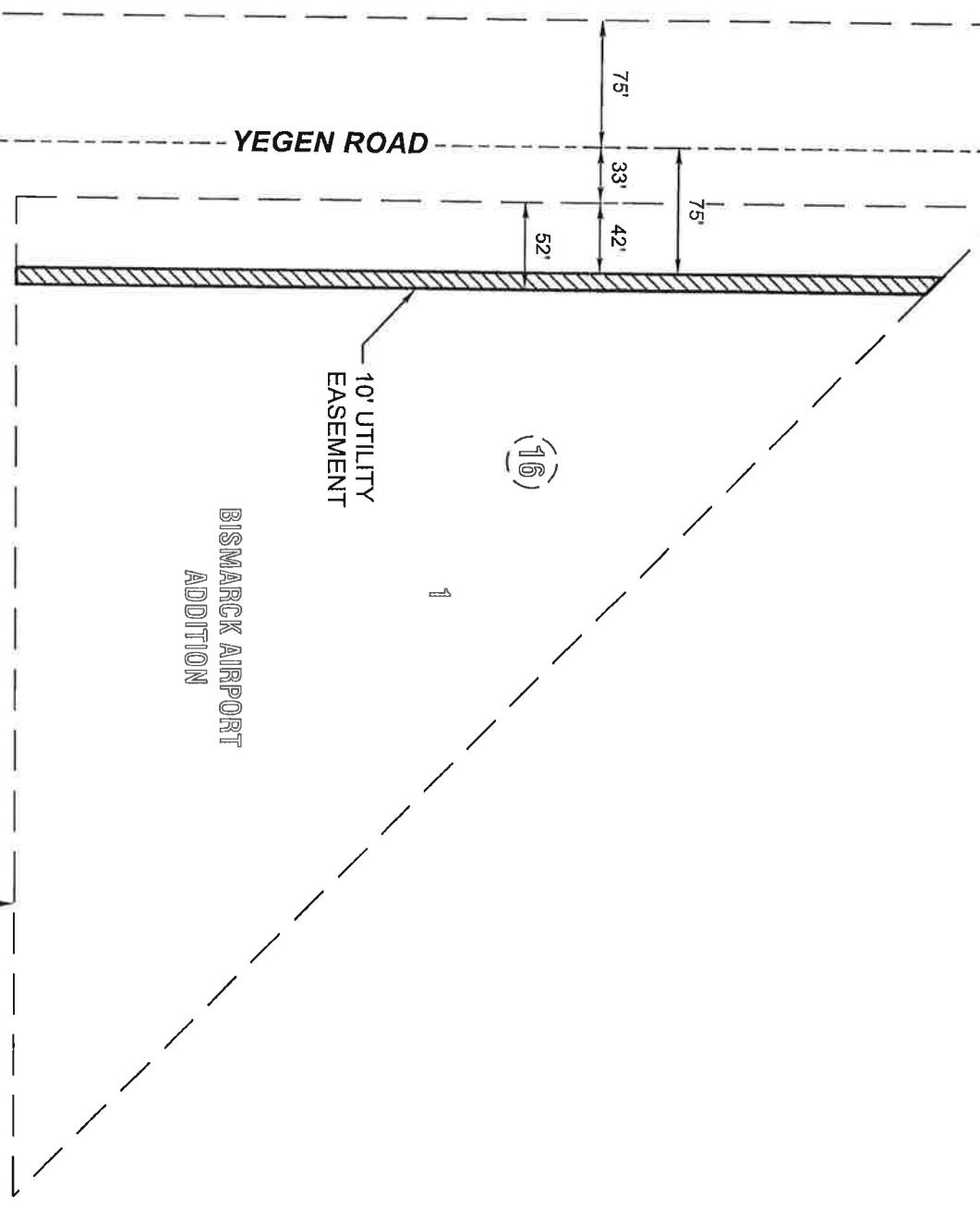
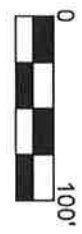
TITLE

General Manager
TITLE

Subscribed and sworn to before me this _____ day
of _____, 20__.

NOTARY PUBLIC

PRINTED NAME
State of North Dakota
My Commission Expires:



TOMMAN ENGINEERING
COMPANY

501 1st Street NW, Mandan, ND 58554
Phone: 701-663-6483 * Fax: 701-663-0923

EXHIBIT "A"

LINCOLN ROAD

YEGEN ROAD

BISMARCK AIRPORT
ADDITION

10' UTILITY
EASEMENT

(16)

66' ROW

EASEMENT LEGAL DESCRIPTION:

A TRACT OF LAND BEING THE EAST 10 FEET OF THE WEST 52 FEET OF LOT 1, BLOCK 16, BISMARCK AIRPORT ADDITION OF THE SW1/4 OF SECTION 13, RANGE 138 NORTH, RANGE 80 WEST OF THE 5TH PRINCIPAL MERIDIAN, OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA.

THE LEGAL DESCRIPTION WAS PREPARED BY ANDRA L. MARQUARDT OF TOMAN ENGINEERING COMPANY, 501 1ST STREET NW, MANDAN, ND, AND BASED ON DOCUMENTS OF RECORD, NAMELY BISMARCK AIRPORT ADDITION, DOCUMENT NO. 741481.