




## Bismarck Airport

**DATE:** July 7, 2022  
**FROM:** Gregory Haug, Airport Director   
**ITEM:** Consider a Utility Easement for Central Power Electric Cooperative

**REQUEST:**

Consider a Utility Easement for Central Power Electric Cooperative.

Please place this item on the July 12, 2022, City Commission meeting agenda.

**BACKGROUND INFORMATION:**

Central Power Electric Cooperative has requested a utility easement for overhead power lines at the Bismarck Airport near the intersection of Yegan Road and Lincoln Road. The Easement is agreeable to airport staff. The easement language has been reviewed by City Attorney, Jannelle Combs and is similar to previous easements approved by the board. The easement will not prevent the City's use of the easement for other utilities and development needs and requires Central Power to relocate the utility at their cost if needed for future development.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Utility Easement for Central Power Electric Cooperative.

**STAFF CONTACT INFORMATION:**

Greg Haug | Airport Director | 701-355-1808 | [ghaug@bismarcknd.gov](mailto:ghaug@bismarcknd.gov)

# **EASEMENT AGREEMENT**

File No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS**, that the Undersigned City of Bismarck, a Municipal Corporation, acting through its Board of City Commissioners, hereinafter, "Grantor" and Central Power Electric Cooperative, Inc., a Corporation authorized to do business in the State of North Dakota, having its principal offices at 525 20th Avenue Southwest, Minot, North Dakota, hereinafter, "Grantees".

## **WITNESSETH:**

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

**WHEREAS**, THE Grantees desire an easement from the Grantor to construct, reconstruct, modify, change, add to, operate, maintain, and remove such electrical transmission and distribution lines 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, which is described as follows:

A tract of land located in Lot 62 Block 1 of Bismarck Airport Addition located in the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23), Township 138 North, Range 80 West, Burleigh County, North Dakota. Said tract described as follows: the northerly 140 feet of the easterly 100 feet of that part of Lot 62 Block 1 of Bismarck Airport Addition lying in Section 23 of the NE ¼ of said section; the electrical transmission line lies within said tract with the centerline of said electrical transmission line more fully described as follows: the point of beginning of said centerline located on the north line of said Lot 62 Block 1 in the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23), located approximately 50 feet West of the northeast corner in the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23); thence southerly for approximately 83 feet to a point located approximately 83 feet South of and 50 feet West of the northeast corner of the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23); thence easterly for approximately 50 feet to a point of ending on the east line of said Lot 62 Block 1 of Bismarck Airport Addition located approximately 83 feet South of the northeast corner of the Northeast Quarter (NE1/4) of said Section Twenty-three (23), Township 138 North, Range 80 West, Burleigh County, North Dakota.

**AND**

A tract of land located in Lot 1 Block 17 of Bismarck Airport Addition located in the West Half of the West Half of the Northwest Quarter (W1/2 W1/2 NW1/4) of Section Twenty-four (24), Township 138 North, Range 80 West, Burleigh County, North Dakota. Said tract to be 100 feet in width with 50 feet on either side of the centerline of an electrical transmission line with the point of beginning of said centerline located approximately 83 feet South of the northwest corner of the Northwest Quarter (NW1/4) of said Section Twenty-four (24); thence easterly for approximately 660 feet to a point of ending on the east line of Lot 1 Block 17 of Bismarck Airport Addition located approximately 83 feet South of and 660 feet East of the northwest corner of the West Half of the West Half of the Northwest Quarter (W1/2 W1/2 NW1/4) of said Section Twenty-four (24), Township 138 North, Range 80 West, Burleigh County, North Dakota.

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

The Grantor covenants that it is 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 ten dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto Grantees a non-exclusive easement for a term of 99 years as described herein.

The Grantor agrees to allow a temporary right-of-way to be used during all periods of construction, reconstruction, reinforcement, repair, and removal upon a strip of land fifty (50) feet wide on each side of the centerline described in this easement. The Grantees 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 clear all trees and other obstructions as may be necessary for the Grantees' 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 Director 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 Grantees, their contractors, successor or assigns, will be restored to the satisfaction of the Airport Director. The Grantees 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 Grantor's use or development of the property requires that Grantees relocate their utilities, such will happen at the Grantor's request and at the expense of the Grantees. Grantor agrees to use reasonable business attempts to avoid the requirement of moving this transmission line due to the scope and cost to the Grantee.

The Grantees 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 filed 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.

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

The Grantees will not assign or transfer this easement in whole or in part, without written consent, which shall not be unreasonably withheld, to the Grantor.

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 Grantees, for themselves, their personal representatives, successors in interest, and assigns, as a part of the consideration hereof, do 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 otherwise be 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 Grantees 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.

The Grantees, their 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 Grantees 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, Grantees hereby agree 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 an 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 of obligations of Grantees under this easement, except as may arise from the active negligence, illegal, or willful misconduct of Grantor, it officers, agents, or employees. Grantor's right to full indemnity hereunder shall arise notwithstanding that the principles of comparative negligence might otherwise impose liability on Grantor pursuant to statutes, ordinances, regulations, or other laws.

The Grantees, as material part of the consideration to be rendered to Grantor under this easement, hereby waive 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 as a result of or arising out of the existence of or exercise of the rights of the parties hereunder, except as may arise from the active negligence, illegal, or sole willful misconduct act of Grantor, its officers, agents, or employees, and notwithstanding that joint, several, or concurrent liability, or principles of comparative negligence, might otherwise impose liability on Grantor.

The rights, conditions, and provisions of this easement shall inure 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.

The Grantor agrees that all structures, poles, wires and other facilities installed on the above described premises at the Grantee's expense, shall remain the property of the Grantee, severed from the real property, and removable at the option of the Grantee.

IN WITNESS WHEREOF, (I) (We) have duly executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_.

In Presence Of: \_\_\_\_\_

\_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Name) (Title)

**ACKNOWLEDGEMENT**

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_ a notary public, within and for Burleigh County, personally appeared \_\_\_\_\_ to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as a free act and deed.

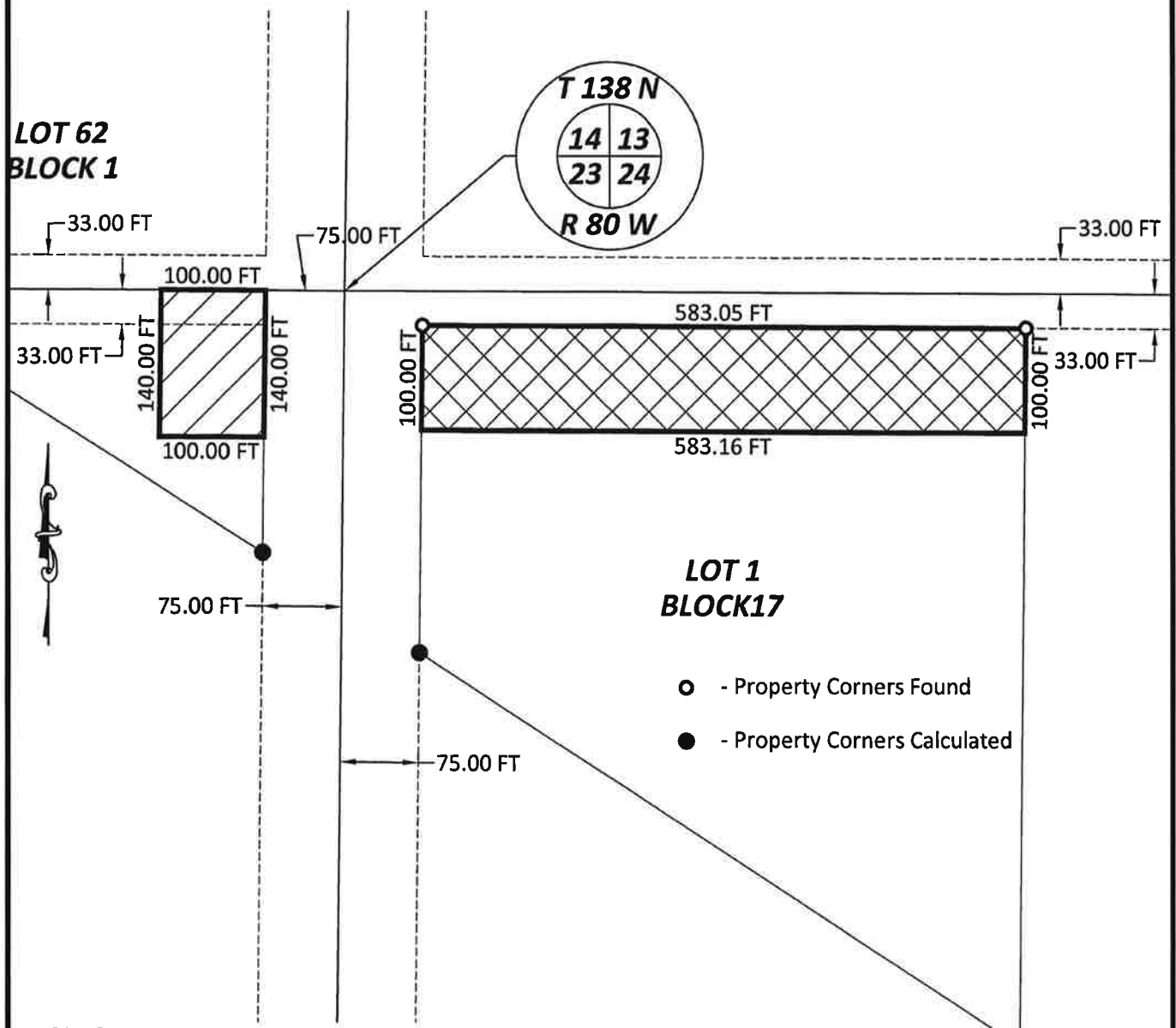
(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

\_\_\_\_\_  
County

**EXHIBIT "A"**  
**UTILITY EASEMENT FOR CENTRAL POWER ELECTRIC COOPERATIVE, INC.**  
 BEING A PART OF LOT 62, BLOCK 1, AND LOT 1, BLOCK 17,  
 OF BISMARCK AIRPORT ADDITION,  
 BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA

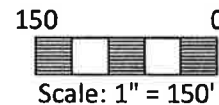


**NOTES:**

Bearings and Distances may vary from previous plats due to different methods of measurement.

Bearings and Distances shown hereon are Grid Bearings and Distances based on the North Dakota State Plane Coordinate System, NAD 83, South Zone, International Feet.

- - Property Corners Found
- - Property Corners Calculated



915 East 11th Street - PO Box 237 - Bottineau, ND 58318  
 110 8th Avenue Southwest - Minot, ND 58701  
 316 Eastdale Drive - PO Box 12777 - Bismarck, ND 58502

**EXHIBIT "A"**

**UTILITY EASEMENT FOR CENTRAL POWER ELECTRIC COOPERATIVE, INC.**

BEING A PART OF LOT 62, BLOCK 1, AND LOT 1, BLOCK 17,  
OF BISMARCK AIRPORT ADDITION,  
BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA

A tract of land located in Lot 62 Block 1 of Bismarck Airport Addition located in the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23), Township 138 North, Range 80 West, Burleigh County, North Dakota. Said tract described as follows: the easterly 100 feet of the northerly 140 feet of said Lot 62 Block 1 of Bismarck Airport Addition; the electrical transmission line lies within said tract with the centerline of said electrical transmission line more fully described as follows: the point of beginning of said centerline located on the north line of said Lot 62 Block 1 in the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23), located approximately 50 feet West of the northeast corner in the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23); thence southerly for approximately 83 feet to a point located approximately 83 feet South of and 50 feet West of the northeast corner of the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Twenty-three (23); thence easterly for approximately 50 feet to a point of ending on the east line of said Lot 62 Block 1 of Bismarck Airport Addition located approximately 83 feet South of the northeast corner of the Northeast Quarter (NE1/4) of said Section Twenty-three (23), Township 138 North, Range 80 West, Burleigh County, North Dakota.

AND

A tract of land located in Lot 1 Block 17 of Bismarck Airport Addition located in the West Half of the West Half of the Northwest Quarter (W1/2 W1/2 NW1/4) of Section Twenty-four (24), Township 138 North, Range 80 West, Burleigh County, North Dakota. Said tract to be 100 feet in width with 50 feet on either side of the centerline of an electrical transmission line with the point of beginning of said centerline located approximately 83 feet South of the northwest corner of the Northwest Quarter (NW1/4) of said Section Twenty-four (24); thence easterly for approximately 660 feet to a point of ending on the east line of Lot 1 Block 17 of Bismarck Airport Addition located approximately 83 feet South of and 660 feet East of the northwest corner of the West Half of the West Half of the Northwest Quarter (W1/2 W1/2 NW1/4) of said Section Twenty-four (24), Township 138 North, Range 80 West, Burleigh County, North Dakota.

This certificate is to the best of my knowledge and belief a true description of said survey. I hereby certify that I have executed this document this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Thomas R. Leshovsky, LS-6134



**WOLD**  
ENGINEERING, P.C.

915 East 11th Street - PO Box 237 - Bottineau, ND 58318  
110 8th Avenue Southwest - Minot, ND 58701  
316 Eastdale Drive - PO Box 1277 - Bismarck, ND 58502