

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance
Consent

AGENDA ITEM: 5 – N
DATE: March 29-30, 2023

SUBJECT

West River Electric Association, Inc. Easements – SDSMT

CONTROLLING STATUTE, RULE, OR POLICY

SDCL §§ [5-2-10](#) & [5-2-11](#)

BACKGROUND / DISCUSSION

The South Dakota School of Mines and Technology (SDSMT) requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of easements to West River Electric Association, Inc for underground and overhead transmission and/or distribution lines and all necessary appurtenant structures associated with the operation and maintenance thereof, to include the a separate equipment right-of-way easement. The proposed easement is consistent with and supports SDSMT’s campus development plans.

IMPACT AND RECOMMENDATION

SDSMT requests the Board of Regents approve proceeding with the requested easements and adopt the Resolution set forth in Attachment I requesting the grant of easements in favor of West River Electric Association, Inc for underground and overhead transmission and/or distribution lines, an equipment right-of-way, and appurtenant structures associated with the operation and maintenance of the foregoing.

Staff recommends approval.

ATTACHMENTS

- Attachment I – Resolution Requesting the Grant of an Easement
- Attachment I, Exhibit I – Draft WREA Line Easement
- Attachment I, Exhibit II – Draft WREA Equipment Easement

DRAFT MOTION 20230329_5-N:

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 South Dakota School of Mines and Technology for the use and benefit of the West River Electric Association, Inc.

The South Dakota Board of Regents (hereinafter referred to as “BOR”), on behalf of the South Dakota School of Mines and Technology, pursuant to the authority vested in BOR under SDCL § 5-2-11 and other applicable law, 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 West River Electric Association, Inc. easements to survey, construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate underground and overhead transmission and/or distribution lines, and to provide the necessary right-of-way to maintain and operate the equipment, through, under, on and across the following described real estate in Lake County, South Dakota:

Those portions of Lot B of the NE1/4 of the SW1/4; and Lot C of GL 3 Less Lot H2, located in Section 31, Township 2 North, Range 9 East, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein; and

Those portions of Lot B of the NE1/4 of the SW1/4; and Lot C of GL 3 Less Lot H2, located in Section 31, Township 2 North, Range 9 East, as further shown in Exhibit A to Exhibit II, a copy of which is attached hereto and incorporated herein.

BOR requests that the easements be generally consistent with the drafts attached hereto as Exhibit I and Exhibit II, without restricting the ability of the parties to further revise 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 March, 2023

SOUTH DAKOTA BOARD OF REGENTS

By _____

Pam Roberts
President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at its meeting conducted on the ____ day of March, 2023, 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 March, 2023

SOUTH DAKOTA BOARD OF REGENTS

By _____

Secretary

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

**STATE OF SOUTH DAKOTA
PERMANENT UTILITY 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 (Grantor) and West River Electrical Association, Inc., P.O. Box 412, Wall, South Dakota 57790 (Grantee).

WHEREAS, the Grantee desires to acquire a permanent Easement, as depicted in Exhibit A attached hereto and incorporated herein by this reference, for the purpose of surveying, constructing, reconstructing, upgrading, replacing, operating and maintaining, repairing, altering, inspecting, removing and enhancing underground and overhead transmission and/or distribution lines and associated equipment, and all necessary appurtenant structures, fixtures, and attachments upon, under, through, and across land belonging to Grantor, and the Grantor desires to cooperate with the Grantee 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 Grantor hereby grants and conveys to the Grantee a permanent utility Easement for the following described purposes, to include the right to ingress and egress over adjacent lands of Grantor as necessary to access the Easement: the right to survey, construct, reconstruct, upgrade, replace, operate, and maintain, repair, alter, inspect, remove and enhance underground and overhead transmission and/or distribution lines and associated equipment owned by Grantee and all necessary appurtenant structures, fixtures, attachments upon, under, through, and across the following legally described real estate within the County of Pennington, State of South Dakota:

Those portions of Lot B of the NE1/4 of the SW1/4; and Lot C of GL 3 Less Lot H2, located in Section 31, Township 2 North, Range 9 East, as more fully described and shown on Exhibit A.

2. Grantor agrees that this Easement may not be modified or revised in a manner that would diminish the rights of Grantee, its successors or assigns.

3. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the Grantor to continue use of any existing utilities, access, or Grantor infrastructure. Existing utilities, access, or infrastructure may be relocated with Grantor permission at the Grantee's expense.

4. Grantor reserves the right to utilize the property for all purposes not inconsistent with the Easement rights herein conveyed. Grantor or Grantee may enter upon the above-described property for the purposes of effectuating the grant of and reserved rights in this Easement.

5. The 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. The Grantee 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 street/highway(s), drainage, water, sanitary sewers, and other utilities or structures installed by the Grantee and damages associated with the Grantee's operation and maintenance of the street/highway improvements and the Grantee agrees to indemnify, defend, and hold the Grantor harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Grantee. The Grantee may require contractors and permittees, to defend, indemnify and hold the Grantee 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 Grantor's or Grantee's sovereign immunity.

7. The Grantee 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.

8. Should the above-described real property granted by this Easement cease to be used for the purpose stated herein for two (2) consecutive years, this Easement reverts to the State of South Dakota or its successors or assigns.

9. The Grantor has and retains the right to lease, sell, or otherwise convey the property or any party thereof, subject to the terms of this Easement, provided, however, that this Easement shall remain in full force and effect until the expiration of the terms hereof notwithstanding such a lease, sale or conveyance. This Easement is also subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances provided by the South Dakota

Constitution Art. VIII, §19, South Dakota Codified Law 5-7-3 to 5-7-6, inclusive, and South Dakota Codified Law § 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.

10. This agreement and attachment(s) shall constitute the entire agreement between Grantor and Grantee. This agreement supersedes any other written or oral agreements between Grantor and Grantee. This agreement can be modified only in writing and signed by the Grantor and Grantee 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 Grantee 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 Grantor or any person or entity succeeding to its interest.

12. This Easement shall be governed by and 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 STATE OF SOUTH DAKOTA has caused this Instrument to be executed in the name of the State, by the Governor and attested to by the Commissioner of School and Public Lands and the Grantee has set its hand and seal this _____ day of _____, 2023.

APPROVED BY:
GRANTOR
STATE OF SOUTH DAKOTA

ATTEST BY:
OFFICE OF SCHOOL AND PUBLIC LANDS

Kristi Noem, Governor

Brock Greenfield, Commissioner

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

Be it remembered that on this ____ day of _____, 2023, before me a Notary Public within aforesaid County and State, personally appeared Kristi Noem, Governor, known to me to be the person who described in, and who executed the within and forgoing instrument and acknowledged to me that executed the same.

On this _____ day of _____, 2023, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be _____ and that they, being authorized to do so, executed the within and forgoing instrument for the purposes therein contained by signing the name of West River Electrical Association, Inc. by themselves as _____.

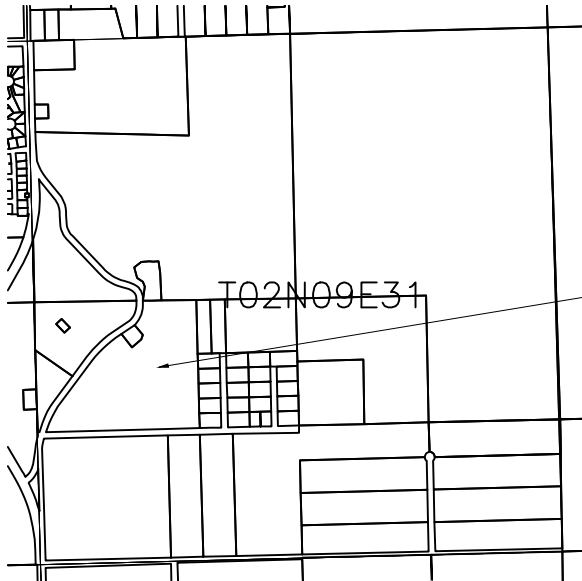
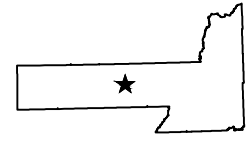
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Notary Seal

Commission Expires

EXHIBIT A
T2N R9E SEC 31



Full Section 2N,9E,Sec 31

Electrical Easement Parcel

25' Electrical Easement



EXISTING UNDERGROUND
POWERLINE

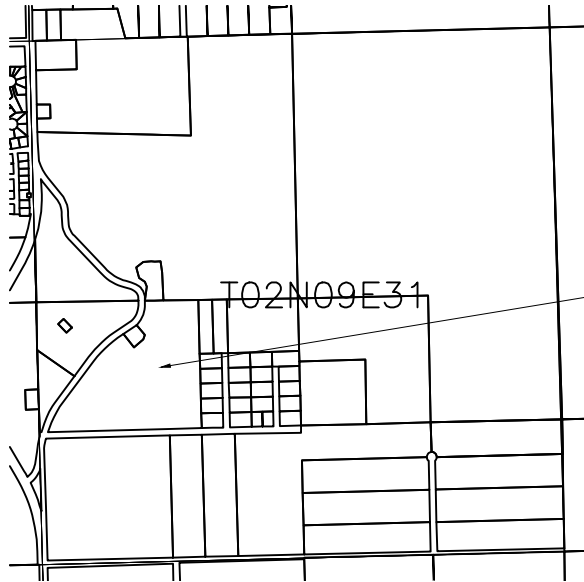
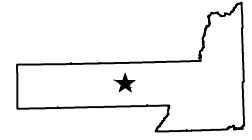
LOT B OF NE1/4SW4; LOT
C OF GL3 LESS LOT H2

PLYMOUTH DR

MORNING VIEW DR

ATTACHMENT I, EXHIBIT I
9

EXHIBIT A
T2N R9E SEC 31



Full Section 2N,9E,Sec 31

Electrical Easement Parcel

8' Electrical Easement



EXISTING OVERHEAD POWERLINE

LOT B OF NE1/4SW4; LOT
C OF GL3 LESS LOT H2

PLYMOUTH DR

MORNING VIEW DR

ATTACHMENT I, EXHIBIT I 10

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

**STATE OF SOUTH DAKOTA
PERMANENT UTILITY 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 (Grantor) and West River Electric Association, Inc., P.O. Box 412, Wall, South Dakota 57790 (Grantee).

WHEREAS, the Grantee desires to acquire a permanent Easement, as depicted in Exhibit A attached hereto and incorporated herein by this reference, for the purpose of surveying, constructing, reconstructing, upgrading, replacing, operating and maintaining, repairing, altering, inspecting, removing and enhancing electrical equipment owned by Grantee, and all necessary appurtenant structures, fixtures, and attachments upon, under, through, and across land belonging to Grantor, and the Grantor desires to cooperate with the Grantee 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 Grantor hereby grants and conveys to the Grantee a permanent right-of-way Easement for the following described purposes, to include the right to ingress and egress over adjacent lands of Grantor as necessary to access the Easement: the right to survey, construct, reconstruct, upgrade, replace, operate, and maintain, repair, alter, inspect, remove and enhance underground and overhead transmission and/or distribution lines and associated equipment owned by Grantee and all necessary appurtenant structures, fixtures, attachments upon, under, through, and across the following legally described real estate within the County of Pennington, State of South Dakota:

Those portions of Lot B of the NE1/4 of the SW1/4; and Lot C of GL 3 Less Lot H2, located in Section 31, Township 2 North, Range 9 East, as more fully described and shown on Exhibit A.

2. Grantor agrees that this Easement may not be modified or revised in a manner that would diminish the rights of Grantee, its successors or assigns.

3. This Easement is granted subject to all existing rights of way and easements over and upon the property including the reservation by the Grantor to continue use of any existing utilities, access, or Grantor infrastructure. Existing utilities, access, or infrastructure may be relocated with Grantor permission at the Grantee's expense.

4. Grantor reserves the right to utilize the property for all purposes not inconsistent with the Easement rights herein conveyed. Grantor or Grantee may enter upon the above-described property for the purposes of effectuating the grant of and reserved rights in this Easement.

5. The equipment or other infrastructure shall be constructed in a good and workmanlike manner and all disturbed area shall be restored to a finished grade.

6. The Grantee 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 street/highway(s), drainage, water, sanitary sewers, and other utilities or structures installed by the Grantee and damages associated with the Grantee's operation and maintenance of the street/highway improvements and the Grantee agrees to indemnify, defend, and hold the Grantor harmless for the same. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Grantee. The Grantee may require contractors and permittees, to defend, indemnify and hold the Grantee 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 Grantor's or Grantee's sovereign immunity.

7. The Grantee 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.

8. Should the above-described real property granted by this Easement cease to be used for the purpose stated herein for two (2) consecutive years, this Easement reverts to the State of South Dakota or its successors or assigns.

9. The Grantor has and retains the right to lease, sell, or otherwise convey the property or any party thereof, subject to the terms of this Easement, provided, however, that this Easement shall remain in full force and effect until the expiration of the terms hereof notwithstanding such a lease, sale or conveyance. This Easement is also subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances provided by the South Dakota Constitution Art. VIII, §19, South Dakota Codified Law 5-7-3 to 5-7-6, inclusive, and South Dakota Codified Law § 5-2-12, and in any law of the State of South Dakota

On this _____ day of _____, 2023, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be _____ and that they, being authorized to do so, executed the within and forgoing instrument for the purposes therein contained by signing the name of West River Electrical Association, Inc. by themselves as _____.

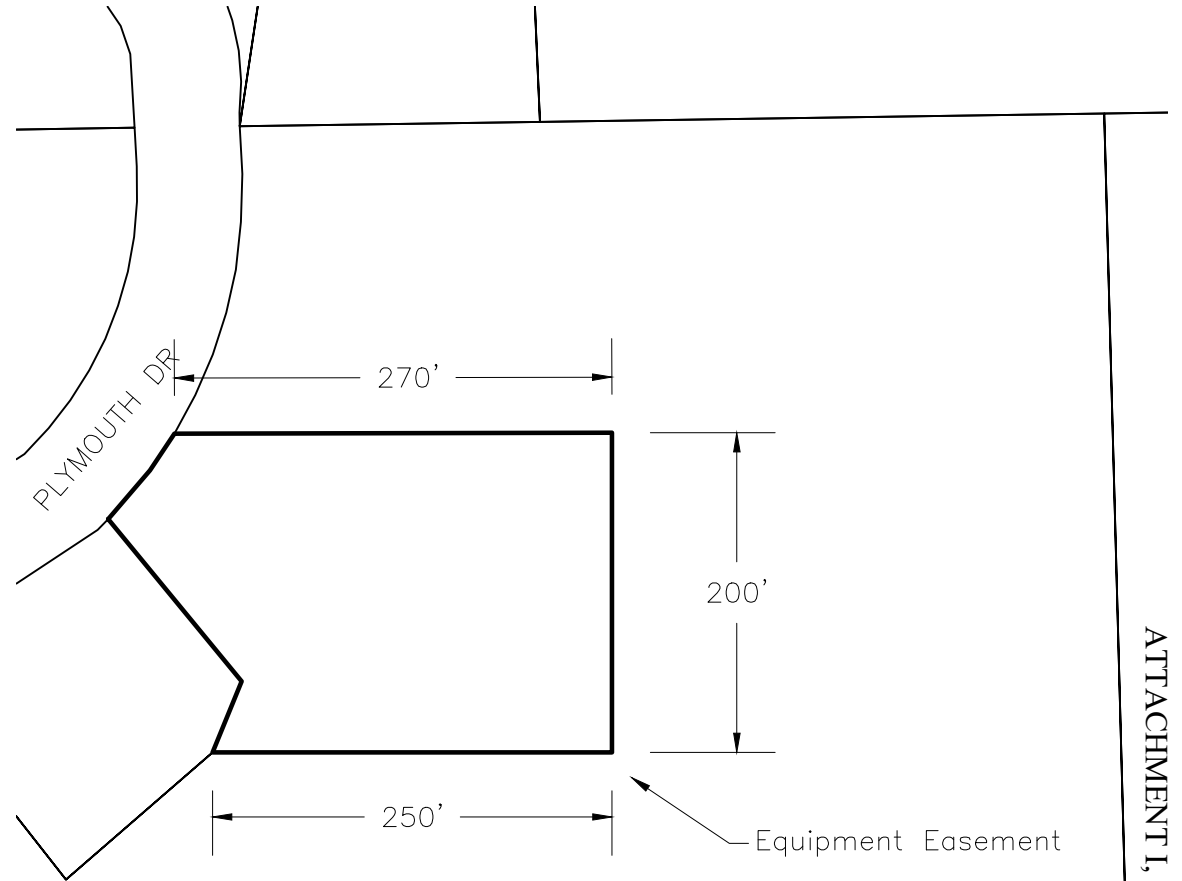
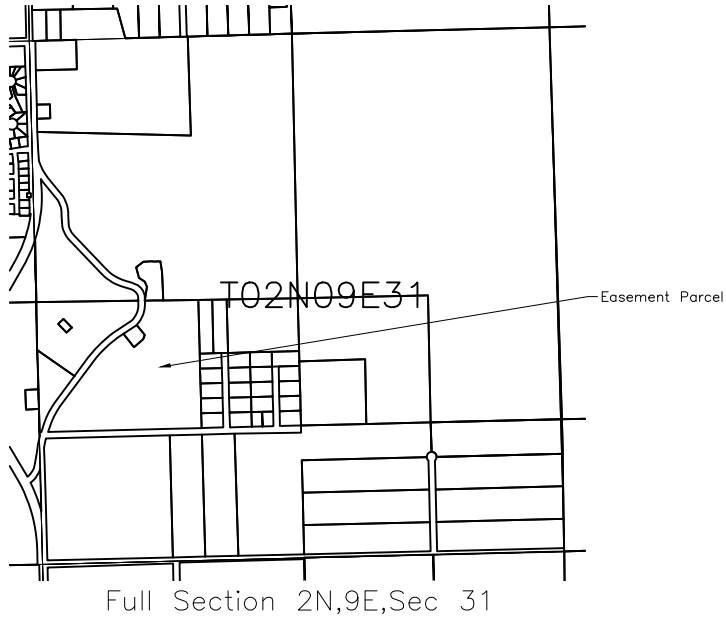
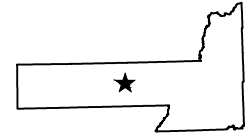
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Notary Seal

Commission Expires

EXHIBIT A
T2N R9E SEC 31



LOT B OF NE1/4SW1; LOT
C OF GL3 LESS LOT H2