



City of Grand Forks  
Staff Report  
Committee of the Whole – June 24, 2019  
City Council – July 1, 2019

**APPROVED & ACCEPTED**  
*by City Council*

07/01/2019

*Maureen Storstad*  
Maureen Storstad  
City Auditor

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**Agenda Item:** Easement Agreement between the City of Grand Forks and Nodak Electric Cooperative, Inc.

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**Submitted by:** LeahRae Amundson, Public Works Operations Director

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**Staff Recommended Action:** Approve the Easement Agreement between the City of Grand Forks and Nodak Electric Cooperative, Inc. upon final review and approval of the City Attorney.

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**June 24, 2019 – Committee Recommended Action:**  
Refer to City Council with the recommendation to approve.

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**July 1, 2019 – Council Action:** Motion by Weber, second by Dachtler, to approve. Motion carried unanimously.

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## **BACKGROUND:**

The City of Grand Forks Municipal Solid Waste (MSW) Landfill (NDDEQ Permit SW-0347) has a dedicated electrical line running along the east side of the City-owned property Section 13. The electrical line is located within the current and future fencing that will extend north with planned sequential landfill cell development.

Nodak Electric Cooperative, Inc. approached the City and has worked with the City of Grand Forks Public Works Department and the City's consultant, CPS, Ltd., the City's Engineering Department, and City Attorney Howard Swanson to draft acceptable terms for an electrical easement to provide electrical service for their customer, TP&L, along North 55<sup>th</sup> Street east of the landfill property. TP&L is a subcontractor for LM Windpower, currently using generator power on the site to the east of the MSW Landfill, interested in a more permanent electrical source for current and future operations.

## **ANALYSIS AND FINDINGS OF FACT:**

The City of Grand Forks Public Works Department has approached this request with respect to concerns for ongoing operations of all parties including but not limited to:

- Future access for maintenance and repair within the City's fenced property
- Service Interruptions necessary for landfill planned cell development and construction, rehabilitation, and/or maintenance work
- Nodak's Property Access limitations regarding the electrical line located inside City property's fence line – operational hours, minimum maintenance interior roadways vs. access from ditch line along North 55<sup>th</sup> Street.

- Any lines or locations not controlled by the City are controlled by that entity (township). Nodak Electric Cooperative, Inc. has assured us that they have obtained appropriate approvals from the township(s) for this connection boring under North 55<sup>th</sup> Street.

The City of Grand Forks Public Works Department, in consultation with Howard Swanson, City Attorney has expressed their interest in working with Nodak Electric Cooperative, Inc. and TP&L, and proposes to move forward upon final review and approval of the City Attorney.

**SUPPORT MATERIALS:**

- Electrical Utility Easement Agreement
- Exhibit A: Map and Area Description

## **ELECTRICAL UTILITY EASEMENT**

\_\_\_\_\_ This Easement is granted by the **City of Grand Forks**, a North Dakota municipal corporation, whose address is 255 N. 4<sup>th</sup> Street, Grand Forks, ND 58203 (hereinafter called the "Grantor") to **Nodak Electric Cooperative, Inc.**, a cooperative association, whose address is 4000 32<sup>nd</sup> Avenue South, Grand Forks, ND 58201 (hereinafter called the "Grantee") for good and valuable consideration, the receipt of which is hereby acknowledged.

WHEREAS, Grantor owns and operates a solid waste disposal facility located in Section 13, Township 152 North, Range 51 West, Grand Forks County, North Dakota;

WHEREAS, Grantee seeks the right to enter in and upon a portion of the premises owned by Grantor for purposes of installing, placing, constructing, excavating, operating, repairing, maintaining, relocating, and replacing in, over and upon the property described herein, an electrical distribution line, including all wires, cables, poles, guide wires, transformers, concrete pads, pedestals, connection boxes, ground connections, attachments, equipment, accessories and appurtenances necessary in connection therewith;

NOW, THEREFORE, the parties hereto agree as follows:

1. Grantor hereby grants to Grantee an easement for electrical utility purposes as described herein in and upon the following described premises:

A strip of land ten feet (10') wide being five feet (5') on each side of a centerline. The location of the centerline is identical to the location of the electrical distribution line on the following described property: All that portion of the Grantor's real property located in the East Half of the East Half (E $\frac{1}{2}$  E $\frac{1}{2}$ ) and the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ ) of Section 13. The described line is located approximately 75 feet west of the east section line and 75 feet north of the south section line, Section 13, Township 152 North, Range 51 West

As further depicted on Exhibit A which is attached hereto and incorporated herein.

2. This easement is granted for purposes of installing, placing, constructing, excavating, operating, repairing, maintaining, relocating, and replacing in, over and upon the property described herein, an electrical distribution line, including all wires, cables, poles, guide wires, transformers, concrete pads, pedestals, connection boxes, ground connections, attachments, equipment, accessories and appurtenances necessary in connection therewith.

3. Any facilities erected pursuant to this easement shall be and remain the property of Grantee removable at the option of Grantee upon termination of service or otherwise. Subject to the provisions hereto, Grantee shall have the right to inspect, rebuild, reconstruct, remove, repair, improve and make such changes, alterations, substitutions and additions in and to its facilities that said Grantee may from time to time deem advisable, including the right to increase or decrease the number of wires, cables, conduits, connection boxes, transformers, enclosures, poles and guide wires.

4. In the event that the Grantee ceases to utilize the easement, Grantor may require Grantee, at Grantee's expense, to remove all improvements placed pursuant to this Easement.

5. It is understood and agreed that the following additional limitations and restrictions shall apply:

- A. Except as otherwise provided herein, Grantee shall at all times have the right to keep the premises described herein, over, in and through which this easement is granted, clear of all buildings, structures and other obstructions, trees, limbs, shrubbery, undergrowth, and roots provided, however, the said Grantor, its successors and assigns may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operation or maintenance of Grantee's facilities.
- B. Grantor shall at all times have the right to maintain a security fence in place notwithstanding the grant of this Easement. Such fence shall not be removed, relocated or altered without the express written consent of Grantor.

- C. Grantee's use of the premises described herein shall not interfere with the Grantor's use of the premises for solid waste disposal purposes.
- D. All underground facilities buried or installed by Grantee shall be at least four feet (4') below the surface.
- E. No above ground wires, cables, pulls or guide wires shall be allowed except upon written approval of Grantor.
- F. All access to the premises described herein and located within the City's fence line needed by the Grantee shall be coordinated with Grantor, except in the situation of an emergency. Except in emergency conditions, prior approval by Grantor for entry shall be required. No entry, construction, maintenance, etc. shall interfere with or interrupt the use and operation of the Grantor's landfill.
- G. Any installation, repairs or other activities on the part of the Grantee requiring excavation shall cause the Grantee to restore the premises to a condition existing prior to such excavation.
- H. Any installation, operation, maintenance, repair or replacement of electrical facilities by Grantee shall not interfere with any landfill operations, fill, drainage, slope, compaction or other improvements placed or belonging to Grantor.
- I. Grantee's use of the easement premises shall not disrupt or diminish current or future planned or designed landfill activities, operations, infrastructure, environmental protection components or structural integrity of the existing or planned improvements of Grantor.
- J. Grantor shall be held harmless from any and all damages resulting from any act or omission on the part of the Grantor affecting the installation, operation, repairs, maintenance or replacement of electrical facilities located within the Grantor's premises. Grantor shall not be liable for any damages resulting from any interruption of service nor shall it be liable or responsible for any direct, indirect, incidental, special, exemplary or consequential damages, including lost profits or interruption of service or business suffered by the Grantee or others resulting from any act or omission on the part of the Grantor which may affect the installation, operation, construction, maintenance, repair or replacement of electrical facilities located within the Grantor's premises.

- K. Grantee shall utilize the easement granted hereunder at its own risk. Grantor makes no warranties, guaranties or representations as to the suitability of the premises for Grantee's use.
- L. No construction, maintenance or operation shall violate any provisions of any permits or license issued by any state or federal agency having jurisdiction over the landfill nor cause the Grantor to be in violation of any permit or licensing provision imposed by any local, state or federal authority having jurisdiction.
- M. Grantor acknowledges receipt of a site plan showing Grantor's current and future improvements and use of the Grantor's property as and for a solid waste disposal facility.

Date: \_\_\_\_\_

**CITY OF GRAND FORKS,**  
a North Dakota municipal corporation

By: \_\_\_\_\_  
MICHAEL R. BROWN, Its Mayor

By: \_\_\_\_\_  
MAUREEN STORSTAD, Its Auditor

Date: \_\_\_\_\_

**NODAK ELECTRIC COOPERATIVE, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

EXHIBIT A

BEGINNING at the Northeast corner of Section 13, Township 152 North, Range 51 West, thence S  $55^{\circ}43'14''$  W, 115.61 feet; thence S  $2^{\circ}43'19''$  E, 2966.21 feet to a point hereinafter referred to as Point "A"; thence S  $2^{\circ}45'00''$  W, 729.17 feet to a point hereinafter referred to as Point "B"; thence S  $2^{\circ}44'51''$  W, 1437.68 feet; thence S  $87^{\circ}18'33''$  W, 2125.51 feet; thence N  $3^{\circ}19'34''$  W, 1037.39 feet; thence N  $40^{\circ}15'00''$  E, 105.42 feet to the POINT OF TERMINUS.

BEGINNING at said "Point A" hereinbefore described; thence S  $83^{\circ}37'32''$  W, 341.62 feet to the POINT OF TERMINUS.

BEGINNING at said "Point B" hereinbefore described; thence N  $87^{\circ}48'58''$  E, 75.00 feet to the POINT OF TERMINUS.

