



Bonner County Commissioners

1500 Hwy 2, Ste. 308 • Sandpoint, ID 83864 • Phone: (208) 265-1438

December 22, 2015

Memorandum

MISC
Item #1

To: Commissioners

Re: Resolution # 15-98 – Priest River Easement for Utility Crossing

On Friday December 10, 2015 the Bonner County Commissioners approved Resolution #15-98 for an Emergency Declaration of a Local Disaster in Bonner County Due to Flooding.

On Tuesday December 15, 2015 the Bonner County Commissioners approved Resolution #15-98 for the Priest River Easement for Utility Crossing. This duplicate assignment of Resolution # 15-98 was a clerical error.

The duplicate Resolution #15-98 for the Priest River Easement for Utility Crossing needs to have a new resolution # assigned.

A suggested motion would be: **I move that the County authorize the renumbering of Resolution #15-98 for the Priest River Easement for Utility Crossing due to a clerical error which was previously approved on December 15, 2015 from Resolution # 15-98 to Resolution # 15-100.**

Recommendation Acceptance: ☒ yes ☐ no


Commissioner Cary Kelly, Chairman

Date: 12/22/15



Bonner County Airports Department



E-MAILED

J.K.
12/15/15
dg

December 15, 2015

MEMORANDUM

Priest River
Airport
Item #1

To: Commissioners

Re: Priest River Airport Resolution No 15 - 98 and Easement.

(100)

Description: The City of Priest River requires a utility easement for the purposes of maintaining a water line on the Priest River Airport and such an easement conveyance is in the public interest.

Distribution: 1 – Original to City of Priest River for signature & notary
1 – Original to be recorded
Copies of the recorded Easement will go to the City of Priest River and to Bonner County
1 – Copy to BOCC Office

A suggested motion would be: Mr. Chairman based on the information before us I move to approve Resolution No 15 - 98 conveying a real property interest to the City of Priest River. This conveyance grants a utility easement for property located at the Priest River Airport. I further move to authorize the Chairman to sign the Easement and Agreement for Utility Crossing administratively.

Recommendation Acceptance: ☒ yes ☐ no


Commissioner Cary Kelly, Chairman

Date: 12/15/15

* original to Jim K.

RESOLUTION NO. 15 - 98 100

AIRPORT - PRIEST RIVER

**CONVEYANCE OF REAL PROPERTY INTEREST
TO CITY PRIEST RIVER**

WHEREAS, the Board of Bonner County Commissioners has the power and authority under Idaho Code 31-808(9) to convey a real property interest to a political subdivision so long as it is in the public interest and so long as notice is provided pursuant to I.C. 31-808(1); and

WHEREAS, the Priest River Airport airfield is owned by Bonner County and located within the city limits of Priest River; and

WHEREAS, the City of Priest River requires a utility easement for purposes of maintaining a water line on the Airport and such easement conveyance is in the public interest; and

WHEREAS, attachment A to this Resolution is the utility easement and agreement; and

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Bonner County, Idaho hereby authorizes the conveyance of real property interest to the City of Priest River. This conveyance grants a utility easement for property located at the Priest River Airport.

The Chairman of the BOCC is further authorized to execute the attached Easement and Agreement for Utility Crossing to the City of Priest River.

ADOPTED as a Resolution of the Board of County Commissioners of Bonner County, Idaho upon a majority vote on the 15 day of December, 2015.

BOARD OF BONNER COUNTY COMMISSIONERS


Cary Kelly, Chairman


Glen Bailey, Commissioner


Todd Sudick, Commissioner

ATTEST: Michael W. Rosedale

By 

Deputy Clerk

 COPY

EASEMENT AND AGREEMENT FOR UTILITY CROSSING

THIS EASEMENT AND AGREEMENT FOR UTILITY CROSSING ("Easement") is made and entered into as of the retroactive October 14, 2015 ("Effective Date"), by and between Bonner County, a Political Subdivision of the State of Idaho (Grantor) and the City of Priest River, an Idaho municipal corporation ("Grantee"):

- A. Grantor owns or controls certain real property situated in Priest River, County of Bonner.
- B. Grantee has requested that Grantor grant to Grantee easement as depicted in Exhibit A, attached hereto and made a part hereof ("Easement") over the Premises for the Easement Purpose (as defined below).
- C. Grantor has agreed to grant Grantee such Easement, subject to the terms and conditions set forth in this document.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of the Easement. Improvements are limited to public water main line extensions and services.

1.2 Grant. Grantor does hereby grant unto Grantee non-exclusive Easement over the Premises in the location depicted on Exhibit A for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any. Any and all property rights conveyed under this instrument are subordinate too any existing or future Federal grant assurance related to the Priest River Airport. To the extent this instrument is incompatible with any grants assurance or Federal regulation such grant assurance or Federal regulation shall automatically supersede, supplant, and replace any rights otherwise conferred to grantee under this instrument.

1.3 Reservations by Grantor. Grantor accepts and reserves the right to:

- (a) To install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character upon, over, under or across the Easement area;

(b) To install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any trails or additional facilities or non-permanent structures upon, over, under or across the Easement area. For the purposes of this document, permanent structures are defined as any construction of a substantial nature that, by definition, requires a building permit and/or a foundation.

(c) To use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Easement area by Grantee for the Easement Purpose, unless pursuant to an existing or future Federal grant requirement or regulation imposed on Grantor.

(d) Provide further, that no work will be done within the Easement area without first obtaining an encroachment permit and complying with all of Grantee's requirements applicable to working in public right of ways, and in addition, supplying as-built drawing to Grantee.

1.4 Term of Easement. The term of the Easement shall be perpetual, to the extent allowed by existing and future Federal grant requirements or regulations imposed upon Grantee.

Section 2 No Warranty of Any Conditions of the Premises.

GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHT, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's property with knowledge of its physical condition and the danger inherent on or near the Premises.

Section 3 Nature of Grantor's interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

Section 4 Plans and Specifications for improvements. If Grantee desires to construct any future additional improvements within the Easement, Grantee shall submit to Grantor for its review information concerning the design, location and configuration of such improvements ("Plans and Specifications"). Grantee will allow sufficient time for Federal review of any proposed improvements prior to construction.

Section 5 Improvements.

5.1 Description of Improvements. Improvements are limited to public water main line extensions and services.

5.2 Construction of Improvements. Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure, construct and maintain the Improvements: (i) in a good and workmanlike manner and in strict accordance with Plans and Specifications (ii) in conformance with all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a manner as shall not adversely affect the structural integrity or maintenance of the

Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. Grantee shall provide as-built drawings of all Improvements to Grantor promptly upon completion of construction.

5.3 Maintenance of Improvements. Grantee shall at all times during the term of the Easements, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Plans and Specifications and the Easement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties. Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage that may occur as a result of any Grantee Party's action or inaction. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Easement area.

5.4 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's Premises in such a manner as preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's Premises, and shall ensure that there is no interference with activities of Grantor, or anyone present on Grantor's Premises with the authority or permissions of Grantor. Grantee shall not disturb any Improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such Improvements.

5.5 No Alterations. If Grantee changes either the location of any of the Improvements or any other aspect of the Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing which voluntary consent must be received in writing prior to such proposed change.

5.6 Approvals: Compliance with Laws and Safety rules.

(a) Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required approvals or authorizations from applicable governmental authorities.

(b) Prior to entering the Premises, and at all times during the term of the Easement, Grantee shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "Grantee's Contractors"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, existing or future Grant requirements imposed on Grantor, covenants and court or administrative decisions and orders, including Environmental Laws (collectively, "Laws").

5.7 Other Improvements. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them

of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications. Grantee must also use all reasonable methods when working on or near Grantor's Premises to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist.

5.8 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the improvements shall be made and maintained by Grantee in such manner, as will provide adequate drainage of and from the Premises and Grantor's adjoining property, and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Premises and Grantor's adjoining property. Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and preexisting drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Premises, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

5.9 Recording Fees. Grantee shall pay Recording fees when due.

Section 6 Indemnification

6.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL AND SHALL CAUSE GRANTEE'S CONTRACTORS TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITIES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COST OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(I) THE EASEMENT, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL PROVISIONS.

(II) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THE EASEMENT,

(III) OCCUPATION AND USE OF THE PREMISES BY GRANTEE'S OFFICERS, AGENTS, INVITEES, LICENSEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "GRANTEE PARTY," AND COLLECTIVELY, "GRANTEE PARTIES"),

(IV) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE PARTIES, OR

(V) ANY ACT OR OMISSION OF GRANTEE PARTIES.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local Environmental Laws in its use of the Premises.

Section 8 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: Bonner County, then Current Administrative Office address.

If to Grantee: City of Priest River
P.O. Box 415
Priest River, ID 83856

Section 9 Miscellaneous.

9.1 All questions concerning the interpretation or application of provisions of the Easement shall be decided according to the substantive Laws of the State of Idaho without regard to conflicts of law provisions.

9.2 This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

9.3 If any action at law or in equity is necessary to enforce or interpret the terms of the Easement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

9.4 If any provision of the Easement is held to be illegal, contrary to any existing or future Federal Grant requirements imposed on Grantor, invalid or unenforceable under present or future Laws, such provision will be fully severable and the Easement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of the Easement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9.5 The Easement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of

Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

9.6 Time is of the essence for the performance of the Easement.

GRANTOR:

By: _____

Name: _____

Cary Kelly
Cary Kelly

ATTEST:

GRANTEE:

City of Priest River

By: _____

James L. Martin, Mayor

Attest: _____

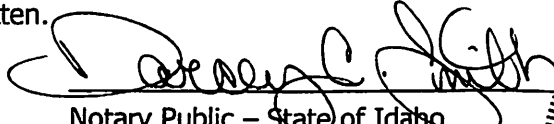
Laurel Knoles, City Clerk

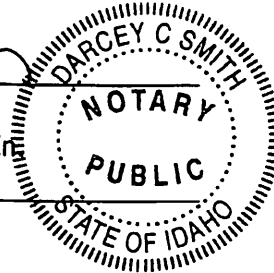
Date

STATE OF IDAHO,)
County of Bonner) :ss

On this 15th day of December, 2015, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared, Cary Kelly, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.


Notary Public – State of Idaho
Residing at Sage, ID therein
My commission expires: 11/14/19



STATE OF IDAHO,)
County of _____) : ss

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared, _____, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public – State of Idaho
Residing at _____ therein.
My commission expires: _____

LEGAL DESCRIPTION:

SEE ATTACHED EXHIBIT MAP SURVEY STAMPED 10/21/15 – ES ENGINEERING FILE 13-104