



NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT

THIS NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT (this “Agreement”) is made and entered into effective as of the 8th day of October 2020, between the City of South Bend, Indiana, an Indiana municipal corporation, acting by and through its Redevelopment Commission (the “City”), and the University of Notre Dame du Lac, an Indiana non-profit corporation (“University”), upon the following terms and conditions:

RECITALS

A. The City owns real property in South Bend, Indiana known as Lot 1 of the Seitz Park Minor Subdivision (the “Property”), a portion of which is an access road as described in **Exhibit A**, attached hereto. The access road portion of the Property shall be referred to as the “Easement Parcel.” The University holds a right of access to a portion of the Property pursuant to the December 12, 2016 lease between the University and the City (the “Lease”). The University leased a portion of the Property from the City for the sole purpose of constructing and operating a hydroelectric facility upon and underneath the leased portion Property; and

B. The parties hereto desire to enter this Agreement to assist the University in accomplishing its goals in the Lease, including but not limited to the creation of renewable energy; and

C. All present and future owners and occupants of the Property shall be and hereby are subject to this Agreement, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration and of the covenants herein contained, the parties hereby covenant and agree that the Property and all present and future owners and occupants of the Property, during the term of the Agreement, shall be and hereby are subject to the easement hereinafter set forth in this Agreement, so that the Property shall be maintained, kept, sold and used in full compliance with and subject to the Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

1. Grant of Utility Easement. The City hereby grants to University, its successors and assigns, a non-exclusive easement and right-of-way for underground electric transmission, distribution, and communication lines and appurtenant equipment and

fixtures, being in, on, over, under, through and across the Easement Parcel. The easement includes the right, now and in the future, to construct, reconstruct, operate, maintain, alter, improve, extend, inspect, patrol, protect, repair, remove, replace, upgrade and relocate within the Easement Area all necessary and convenient facilities relating to the generation of electricity from the University's hydroelectric facility, which include but are not limited to: conductors, conduit, enclosures, grounding systems, foundations, manholes, riser poles and all other appurtenant equipment and fixtures, and to lay conductors, wires and cables; together with the reasonable right to add to or modify said facilities from time to time.

2. Maintenance; Restoration. The City will, at its sole expense, maintain and repair in good order and condition the Easement Parcel, as determined in its sole discretion. The foregoing shall include, but not be limited to: (a) timely removal of snow from the Easement Parcel in accordance with the City's schedule therefor and (b) paving, repaving and resurfacing the drive areas of the Easement Parcel, as and when needed in the sole discretion of the City. In the event University damages any part of the Easement Parcel or the public right-of-way along Colfax Avenue, University shall promptly restore such areas to substantially the same condition that existed immediately prior to such damage and to City standards. For purposes of this provision, normal wear and tear shall not be considered "damage" to the Easement Parcel.
3. Clear Path of Travel. The City and its agents and employees will place no permanent structures in, on, or over the Easement Parcel that will obstruct or interfere with the University's use of the Easement Parcel without University's prior consent.
4. Ownership. The City represents and warrants that it is lawfully seized of the Easement Parcel, that it has full right and power to grant the easement contained herein, and that the Easement Parcel is free from all encumbrances, except any matters of record.
5. Hazardous Materials. University shall not cause or knowingly permit any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted upon the Easement Parcel.
6. Indemnification. Each party shall indemnify and hold the other party, its departments, boards, officers, members, agents, directors, managers and employees harmless from and against any and all claims resulting from damage to the indemnified party's property or injury to any person upon its property caused by the sole negligence or gross negligence of the indemnifying party. Notwithstanding the foregoing or anything in this Agreement to the contrary, the City does not waive any governmental immunity or liability limitations available to it under Indiana law.
7. Non-waiver. The failure of University to exercise any of the rights granted herein, or the removal of any facilities from the Easement Area, shall not be deemed to constitute an abandonment or waiver of the rights granted herein or under the Lease.
8. Reservation of Rights. City reserves for itself the free use of the Property, subject to the Lease and any other contractual restrictions, in any manner not inconsistent with the terms of this Agreement.
9. Covenant Running with the Land. The City and University intend that the rights and obligations set forth herein shall run with the land and create equitable servitudes burdening the Property and benefitting the Property, shall bind every person having

any fee, leasehold, or other interest therein, and shall inure to the burden or benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

10. Term. This Agreement shall continue in effect for the entire duration of the Lease, including during any extension periods of the Lease.
11. Recording. This Agreement shall be duly recorded in the Office of the Recorder of St. Joseph County, Indiana, and all recording fees will be paid by University.
12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana without reference to its conflict of laws principles.
13. Cooperation. Each party shall, at no additional cost to the other party, cooperate with the other and its authorized representatives with regard to any reasonable requests made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement and to provide any and all additional documentation deemed necessary to effectuate the transaction contemplated by this Agreement and the Lease. Each party further agrees that the term “cooperate,” as used in this Agreement, includes agreeing to execute or re-execute any documents that the parties reasonably deem necessary or desirable to carry out the intent of this Agreement. All parties recognize the duty of each party to act in good faith and with fair dealings when effectuating the intent of this Agreement.

(signature pages follow)

EXHIBIT A

A PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, CITY OF SOUTH BEND, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT # 3 IN THE PLAT OF "CASCADE MINOR SUBDIVISION" AS RECORDED AS DOCUMENT NUMBER 1808428 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE; THENCE SOUTH 89°54'00" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE, A DISTANCE OF 19.00 FEET; THENCE SOUTH 00°56'55" EAST, A DISTANCE OF 123.85 FEET; THENCE NORTH 89°03'05" EAST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 00°56'55" EAST, A DISTANCE OF 213.21 FEET; THENCE SOUTH 89°55'28" WEST, A DISTANCE OF 24.00 FEET; THENCE NORTH 00°56'55" EAST; A DISTANCE OF 336.94 FEET TO THE POINT OF BEGINNING.
CONTAINING 0.17 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHTS-OF-WAY, EASEMENTS, AND RESTRICTIONS OF RECORD.