

Line Name: South Bend - West Side

Line No.: TLN120:92181 **Easement No.:** 3

**EASEMENT AND RIGHT OF
WAY**

On this_ day of _____, 2023, in consideration of Ten and NO/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the covenants hereinafter set forth, **City of South Bend Department of Public Parks**, acting by and through its Board of Park Commissioners, whose address is whose address is 301 S. St. Louis Blvd., South Bend, Indiana 46617. ("Grantor"), whether one or more persons, hereby grants, sells, conveys, and warrants to **Indiana Michigan Power Company**, a(n) Indiana corporation, a unit of American Electric Power, whose principal business address is 1 Riverside Plaza, Columbus, Ohio 43215, ("AEP") and its successors, assigns, lessees and tenants a permanent easement and right of way ("Easement"), for electric transmission, distribution, and communication lines and appurtenant equipment and fixtures, being, in, on, over, under, through and across the following described lands of the Grantor, situated in the State of Indiana, St. Joseph County, Clay Township, Southeast Quarter section, Section 32, Township No. 38 North, Range No. 3 East, Tax Parcel Number 71-04-32-452-022.000-004.

Grantor claims title by Warranty Deed, Deed Book 792, Page 235, recorded on 09/26/1974; in the St. Joseph County Recorder's Office.

Auditor/Key/Tax Number: 71-04-32-452-022.000-004

The Easement Area is more fully described and depicted on Exhibit "A", a copy of which is attached hereto and made a part hereof ("Easement Area").

GRANTOR FURTHER GRANTS AEP THE FOLLOWING RIGHTS:

The right, now or in the future, to construct, reconstruct, operate, maintain, alter, improve, extend, inspect and patrol (by ground or air), protect, repair, remove, replace, upgrade and relocate within the Easement Area, poles, towers, and structures, made of wood, metal, concrete or other materials, and crossarms, guys, anchors, grounding systems, and

all other appurtenant equipment and fixtures, and to string conductors, wires and cables; together with the right to add to said facilities from time to time, and the right to do anything necessary, useful or convenient for the enjoyment of the Easement herein granted, (the "Work").

The right, in AEP's discretion, now or in the future, to cut down, trim, remove, and otherwise control, using legally acceptable herbicides or tree growth regulators or other means, any and all trees, overhanging branches, vegetation or brush situated within the Easement Area. AEP shall also have the right to trim trees situated on lands of Grantor which adjoin the Easement Area when in the opinion of AEP those trees may endanger the safety of, or interfere with the construction, operation or maintenance of AEP's facilities or ingress or egress to, from or along the Easement Area. AEP shall consult with Grantor in the event AEP determines that a tree located outside of the Easement Area should be removed, and Grantor shall determine, in its sole discretion, whether the tree shall be cut down or some other remedy proposed; provided, however, that when there is an urgent need to remove a tree for safety reasons or to prevent imminent damage to AEP's facilities, as determined by AEP's experienced forestry personnel in writing and provided to the Grantor, AEP will not be required to obtain Grantor's consent before removing the tree in question. Any such removal shall be subject to the compensation requirements of this Agreement.

AEP shall have the right of unobstructed ingress and egress, at any and all times, over, across and along and upon the Easement Area, and, at reasonable times, across the adjoining lands of Grantor as may be reasonably necessary for access to and from the Easement Area for the above referenced purposes. AEP shall not have the right to stage equipment on adjoining lands of Grantor without first obtaining Grantor's prior written approval. The Grantor understands AEP has or may seek access to City rights-of-ways ("ROW") for portions of the Work. AEP understands and agrees to secure the required permits and/or approvals from the City of South Bend for this ROW access.

THIS GRANT IS SUBJECT TO THE FOLLOWING CONDITIONS:

The Grantor reserves the right to cultivate annual crops, pasture, decorative plantings, construct fences (provided gates are installed that adequately provide AEP the access rights conveyed herein) and roads or otherwise use the lands encumbered by this Easement in any way not inconsistent with the rights herein granted. In no event, however, shall Grantor, its successors, and assigns plant or cultivate any trees or place, construct, install, erect or permit any temporary or permanent building, structure, improvement or obstruction including but not limited to, storage tanks, billboards, signs, sheds, dumpsters, light poles, water impoundments, above ground irrigation systems, swimming pools or wells, or permit any alteration of the ground elevation, over, or within the Easement Area. AEP may, at Grantor's cost, remove any structure or obstruction if placed within the Easement Area, and may re-grade any alterations of the ground elevation within the Easement Area.

AEP agrees to repair or pay the Grantor for actual damages sustained by Grantor to trees, shrubs, decorative plantings, crops, fences, gates, irrigation and drainage systems, drives, or lawns that are permitted herein, when such damages arise out of AEP's exercise of the rights herein granted. AEP agrees to pay Grantor Five Hundred Dollars (\$500.00) per tree, payable to the City of South Bend, 227 W. Jefferson Blvd., South Bend, IN, within thirty (30) days of commencement of Work in the Easement Area as damages for the removal of any trees with a diameter of five (5) inches or greater within the Easement Area ("the Trees"). It is further agreed that the City is permitted to decide which stumps from the Trees AEP is required to remove by grinding and which stumps from the Trees the City wants to be retained in place, if any.

The Parties acknowledge that AEP's use of the Easement Area may involve Work resulting in disturbance and damage to the City property within and adjacent to the Easement Area. AEP agrees that at its sole expense, it shall restore the City property to the same or better condition than existed immediately prior to AEP's use, with the exception of structures installed within the scope of AEP's Work. AEP will notify the City promptly upon completion of restoration, so as to provide the City with sufficient time to inspect and provide written notice of its acceptance of the restoration for each portion of the Property used.

AEP agrees that full or partial closure and/or loss of use and enjoyment of the Property managed by the City's Board of Park Commissioners, for a period in excess of 90 consecutive days, would result in harm to the City. AEP acknowledges that, if the Work consisting of AEP's initial construction and installation of its facilities within the Easement Area which requires full or partial closure of the Property ("Initial Work") is not completed within 90 days after the date the Initial Work is commenced, the City may assess a \$500.00 per day Property use fee for each day after the 90th day until the Initial Work is complete. Notwithstanding the foregoing, the City agrees that (1) AEP's initial tree clearing and clean-up work will not trigger commencement of the 90-day period for completing the Initial Work, and (2) days where AEP is prevented from performing the Initial Work due to circumstances beyond AEP's reasonable control will not count toward the 90-day period. Prior to commencing the Initial Work, AEP will provide the City with written notice confirming the Initial Work start date.

At all times during the performance of the Work, AEP agrees to conduct the Work in a manner consistent with keeping the Easement Area in good order and condition and free of debris. During times of construction, maintenance of traffic and any other signage and barriers must be checked regularly to ensure adequate safety zones and public paths are maintained. Except in cases of an emergency, AEP and its subcontractors must notify the City, by and through its Director of Venues, Parks & Arts (or his designee), a minimum of forty-eight (48) hours prior to any scheduled maintenance work.

AEP recognizes and acknowledges that the City may seek, in the future, to improve the Easement Area for the use, enjoyment and benefit of City's residents and visitors. AEP

agrees to reasonably cooperate with the City when requested to locate, describe, and document the work (with reasonable opportunity to respond to any such requests) to permit City to plan and construct improvements in the Easement Area in a manner consistent with the terms of this Agreement, provided that the City may not make any improvements where the construction work or the improvements themselves would interfere with the operation of AEP's facilities, create any unsafe condition, or cause AEP's facilities to be violation of applicable regulations. The Parties will coordinate for any proposed work in the Easement Area and it is understood and agreed that widening and improvements of the walking path, construction and maintenance of athletic fields, park benches, bike racks, charging stations, temporary vendor stands and event facilities, tents, signage and lighting that do not interfere with AEP structures do not amount to substantial interference with the Work.

In the event that any portion of the Easement Area is rendered permanently unfit for the Work due to natural or man-made disasters or advancements in technology ("Unfit Use Area"), AEP is permitted to remove or abandon its structures from the Unfit Use Area at its sole expense and subject to the terms of this Agreement. Abandonment or removal plans will be coordinated between City and AEP and will include an appropriate remediation and restoration plan for AEP to implement, as well as, subject to the paragraph below, a written agreement suitable for recording terminating this Easement.

The failure of AEP 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, except as otherwise provided in this paragraph. Should five years pass from the date that this Easement is executed, and AEP has either never used the Easement Area or has ceased using the Easement Area for a period of 24 consecutive months, Grantor may send AEP written notice of its intention to terminate this Easement. If AEP fails to notify Grantor, within 60 days after receiving Grantor's notice, that AEP has plans to resume use of the Easement Area, this Easement will terminate without any additional notice required by Grantor or AEP. AEP will be responsible for the cost and removal of such unused facilities within six months of the termination of this Easement. If Grantor determines that the Easement Area requires maintenance which AEP is obligated to perform, including but not limited to maintaining AEP facilities and keeping the surrounding areas free from potential safety and/or damage threats, Grantor shall notify AEP in writing to request such maintenance. If AEP agrees it is obligated to perform the requested maintenance and does not remedy the issue within sixty (60) days after such written notice, Grantor may file an action for injunctive relief to compel AEP to perform the maintenance and/or file an action for damages.

This instrument contains the complete agreement between the parties herein and shall inure to the benefit of and be binding on their respective successors, assigns, heirs, executors, administrators, lessees, tenants, and licensees.

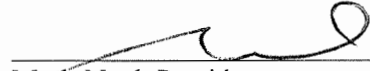
This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

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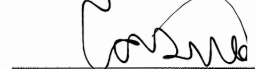
IN WITNESS WHEREOF, the Grantor has executed this Easement effective the day, month and year first above written.

GRANTOR

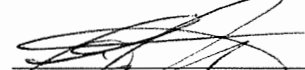
CITY OF SOUTH BEND, INDIANA BOARD OF PARK COMMISSIONERS



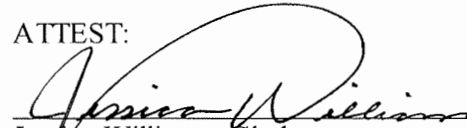
Mark Neal, President



Consuella Hopkins, Vice President



Sam Centellas, Member

ATTEST:


Jessica Williams, Clerk

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.
Thomas G. St. Pierre

This instrument prepared by Thomas G. St. Pierre, Associate General Counsel - Real Estate, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215 for and on behalf of Indiana Michigan Power Company, a unit of American Electric Power.

When recorded return to: American Electric Power -Transmission Right of Way, PO Box 60, Fort Wayne, IN 46801.