



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: November 5, 2018
MEMO TO: Carol Calabresa, Chair
Planning Committee
FROM: Randall L. Seebach
Director of Planning and Land Preservation

Agenda Item# 9.6

RECOMMENDATION: Recommend approval of a Resolution approving an Easement Agreement with Commonwealth Edison for a permanent utility easement for existing electrical poles along Grand Avenue at Grant Woods Forest Preserve

STRATEGIC DIRECTIONS SUPPORTED: Organizational Sustainability

FINANCIAL DATA: Commonwealth Edison (ComEd) will pay the District an easement fee in the amount of \$11,873.80.

BACKGROUND: In September 2018, the District was approached with a request for replacement of existing electric poles serving residents near Grand Avenue and IL Route 59 in unincorporated Lake County on the north side of Grand Avenue at Grant Woods Forest Preserve. Through this process it was discovered that no documentation could be found regarding rights for the existing utility poles along the north side of Grand Avenue on District property. Typically, before presenting an easement agreement to the Planning Committee for its review and recommendation, staff would seek from the Committee a Policy Direction whether to negotiate the easement agreement. However, because these electric poles already exist, for the sake of efficiency staff is recommending approval of an agreement granting a permanent easement to ComEd to operate and maintain the poles, any related overhead and underground wires, and any necessary equipment within an easement corridor at Grant Woods Forest Preserve. The easement would “clean up” the missing documentation, by allowing the existing poles to continue in operation. The District has worked with ComEd in the past to establish Easement Agreements on District property where none can be found. Staff has developed a protocol and standardized Agreement which has been reviewed and approved by Committee and Board in the past.

REVIEWED BY OTHERS: Executive Director, Chief Operations Officer, Director of Operations and Infrastructure, Director of Finance, Corporate Counsel.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR NOVEMBER MEETING
NOVEMBER 13, 2018**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “a Resolution approving an Easement Agreement with Commonwealth Edison for a Permanent Utility Easement at Grant Woods Forest Preserve,” and requests its approval.

PLANNING COMMITTEE:

Date: 11-5-2018 Roll Call Vote: Ayes: ___ Nays: ___
 Voice Vote Majority Ayes; Nays: 0

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH
COMMONWEALTH EDISON FOR A PERMANENT UTILITY EASEMENT
AT GRANT WOODS FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns property that is along Grand Avenue between Fairfield Road and IL Route 59 in Lake County, Illinois known as Grant Woods Forest Preserve (the “Property”); and

WHEREAS, Commonwealth Edison (“ComEd”) operates existing electrical poles within the Property that serve residents in Lake Villa Township; and

WHEREAS, ComEd desires that the District grant a permanent easement on 0.34 acres of the Property to allow ComEd to operate, maintain, and replace electrical poles, lines and associated equipment on the Property, pursuant to an easement agreement in substantially the form attached hereto (the “Agreement”); and

WHEREAS, it is in the best interest of the District to approve the Agreement in substantially the form attached hereto; and

WHEREAS, Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, authorizes the District to grant easements under or across District property for the construction, operation, and maintenance of public services; and

WHEREAS, the District has adopted an Ordinance Regarding Licenses and Easements for Public Services (the “Ordinance”) which sets forth the general requirements for granting easements;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as part of this Resolution by this reference.

Section 2. Approval of Easement Agreement. The Agreement is hereby approved in substantially the form attached hereto. The President, Secretary and Executive Director of the District are hereby authorized and directed to execute and attest to, on behalf of the District, the Agreement in substantially the form attached hereto. In the event that any provision of the Agreement conflicts with the Ordinance, the conflicting provision of the Ordinance is hereby waived.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2018

AYES:

NAYS:

APPROVED this ____ day of _____, 2018

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

Prepared by:
Matthew E. Norton
Burke, Warren, MacKay
& Serritella, P.C.
330 North Wabash
21st Floor
Chicago, IL 60611

After recording return
to:
Rebecca Hegner
LCPD
1899 West Winchester Rd
Libertyville, IL 60048

Above Space For Recorder's Use Only

EASEMENT AGREEMENT
BY AND BETWEEN
LAKE COUNTY FOREST PRESERVE DISTRICT
AND
COMMONWEALTH EDISON COMPANY

This Easement Agreement (this "Agreement") is dated and executed as of the 13th day of November, 2018 (the "Effective Date"), and is by and between the LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/0.001 et seq. (the "District"), and COMMONWEALTH EDISON COMPANY, an Illinois corporation (the "Company"). In consideration of the provisions below and other consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the Company agree as follows:

1. **BACKGROUND.** The District holds fee simple title to property commonly known as the Grant Woods Forest Preserve in Lake County, Illinois (the "Subject Property"). The Company desires to install, maintain, operate, and replace poles, guys, anchors, wires, cables, transformers and other facilities (the "Facilities") used in connection with overhead transmission and distribution of electricity across and along the portion of the Subject Property legally described on Exhibit A attached hereto and generally depicted as the "EASEMENT AREA" on Exhibit B attached hereto (the "Easement Area").
2. **GRANT OF EASEMENT.** The District hereby grants to the Company a non-exclusive easement in, on, over and under the Easement Area for the sole purpose of allowing the Company to install, maintain, operate, and replace the Facilities (the "Easement"). The Company shall use the Easement in compliance of with all applicable laws (the "Requirements of Law").
3. **TERM OF EASEMENT.** The term of the Easement shall commence on the Effective Date and shall be perpetual.

4. MAINTENANCE OF EASEMENT AREA.

A. Easement Area. The Company must maintain the Easement Area in a safe, good and clean condition without hazard to public use. Additionally, the Company must comply with all Requirements of Law that prohibit, restrict, or regulate any hazardous materials.

B. District Property. If the Company's use of the Easement results in any damage to the Easement Area or any other property owned by the District, the Company must repair such damage and restore the property to its condition prior to such damage. If the Company fails to commence such repair and restoration with due diligence, within 30 days after the District gives the Company notice thereof, then the District shall have the right, but not the obligation, to cause the affected property to be repaired and restored and to recover from the Company all costs incurred by the District to cause the affected property to be repaired or restored.

C. Abatement of Dangerous Condition. If the Facilities threaten the public's health or safety, (i) the Company shall take all necessary action to abate the dangerous condition and (ii) if the Company fails to undertake such abatement with due diligence, within 48 hours after the District gives the Company notice thereof, the District shall have the right, but not the obligation, to take all necessary action to abate the dangerous condition, including restricting access near or installing barriers around the dangerous condition, and the Company shall reimburse the District for all costs incurred by the District in the performance of such abatement.

5. RESTORATION AND VACATION. Upon termination or abandonment of the Easement for any reason, the Company shall, at no cost to the District, (i) remove the Facilities from the Easement Area, (ii) restore the Easement Area to a natural condition acceptable to the District in accordance with a restoration plan approved by the District, and (iii) thereafter, vacate the Easement Area. If the Company fails to remove the Facilities, or to restore the Easement Area, the District shall have the right, but not the obligation, to perform and complete the removal and restoration, and to charge the Company for all costs and expenses, including legal and administrative costs, incurred by the District for such work.

6. RESERVATION OF RIGHTS. The District reserves its right to: (i) use the Easement Area for any public use, in any manner that will not unreasonably prevent, impede, or interfere with the Company's use of the Easement Area and (ii) grant other non-exclusive licenses or easements within the Easement Area that do not unreasonably prevent, impede, or interfere with the Company's use of the Easement Area. The Company will maintain the Facilities so that they do not unreasonably interfere with the District's use and occupancy of the Easement Area.

7. NO ASSESSMENTS AND LIENS. The Company represents and warrants that it will: (i) not assess or impose, or allow to be assessed or imposed, against the Easement Area any special assessment, special service area tax, recapture fee, or similar assessment, tax, or fee (an "Assessment"), (ii) indemnify the District from any Assessment that is imposed, (iii) take all necessary action to keep the Easement Area free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with the Facilities, and (iv) cause, at the Company's sole cost and expense, (a) any lien that is filed against the Easement Area in connection with the Facilities to be discharged and released, and (b) evidence of this discharge and release to be recorded against the Easement Area, all within 30 days after the date of filing of the lien.

8. SECURITY. If the Company fails to comply with its obligations in Sections 4, 5, or 7, then the District may require the Company to deposit with the District security in the form of cash or a certified or cashier's check made payable to the District, in an amount determined by the District, as a guarantee that the Company shall comply in the future with such obligations, including any required restoration and

repair of any damage to the Easement Area or any other property owned by the District. Refund of such funds shall be in the manner prescribed by the District's "Ordinance Regarding Licenses and Easements for Public Services" approved July 15, 2014, and as may be amended (the "License and Easement Ordinance").

9. INDEMNITY. The Company assumes sole and complete responsibility for any personal injury, including death, and damage to property that may arise directly or indirectly from the use of the Easement Area by the Company, its officers, directors, trustees, board members, partners, employees, agents and contractors. The Company shall indemnify, hold harmless, defend, and release the District, its commissioners, officers, agents, and employees from and against any alleged loss, claim, damage, and expense (including, without limitation, attorneys' fees and litigation costs) that may be alleged or asserted against any of those parties in connection with (i) the Facilities, the Easement, or the use of the Easement Area by the Company, or (ii) the Company's performance of, or failure to perform, its obligations under this Agreement (collectively, the "Indemnified Claims"), whether or not any such performance or failure to perform is alleged to result from the Company's breach of this Agreement, negligence, willful misconduct, or any other standard of conduct; however, this indemnity will not apply to the extent any Indemnified Claims are caused by the willful misconduct or gross negligence of the District.

10. INSURANCE. The Company shall, at no cost or expense to the District, procure and maintain insurance policies, coverages, and limits that the District determines, in its sole judgment, are sufficient to protect the District, the Easement Area, the Subject Property, and any other property owned by the District from the Indemnified Claims and all other actions by the Company pursuant to this Agreement. The Company will cause the District to be named as an additional insured on, and will provide to the District certificates of insurance acceptable to the District evidencing, the insurance required by this Section 10. Notwithstanding anything to the contrary in this Agreement, the Company shall have the right to self-insure all risks required by this Agreement.

11. EASEMENT FEE; REIMBURSEMENT OF EXPENSES. The Easement will not become effective until the Company has paid to the District a \$1,000 monetary fee (the "Monetary Fee"), the fair market value of \$10,873.80 and any applicable tree compensation fees as determined by a botanic survey, if required by the District in its sole discretion, all in accordance with the License and Easement Ordinance. The Company shall, no later than 30 days after the receipt of an invoice from the District, reimburse the District for all out-of-pocket costs and staff costs incurred by the District relating to the review, consideration, negotiation, and preparation of: (i) the Company's application for the Easement, and (ii) this Agreement, all in accordance with the License and Easement Ordinance.

12. REVOCATION OF EASEMENT; REVERTER.

A. Revocation. If the Company breaches any term or provision of this Agreement, and the Company fails to cure such breach within the time provided for in this Agreement, or if no time is provided for in this Agreement, within a reasonable time, the District, in addition to any other remedy it may have, may: (i) terminate this Agreement, (ii) revoke the Easement, (iii) record with the office of the Recorder of Lake County, Illinois, a certified copy of a document revoking the Easement, and (iv) pursue any of the remedies set forth in this Agreement or otherwise available to the District at law or in equity.

B. Reverter. If the Company ceases to use the Easement for the purposes set forth in Section 1 of this Agreement for a period of twelve months or more, the Company will be deemed to have abandoned the Easement and all of the Company's rights in the Easement Area shall revert to the District, and the District may prepare and record with the office of the Recorder of Lake County, Illinois, a certified copy of a document memorializing such abandonment.

13. COVENANTS RUNNING WITH THE LAND. The Easement and the rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall run with the land, shall be recorded against the Easement Area, and shall be binding upon and inure to the benefit of the District and the Company and their respective mortgagees, lessees, heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Subject Property, or any portion thereof, and all persons claiming under them.

14. NOTICES. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally, (ii) by a reputable overnight courier, or by (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (i) actual receipt, (ii) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit, or (iii) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 14, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the District shall be addressed and delivered to the following address:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, IL 60048
Attention: Executive Director

with a copy to:

Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash, 21st Floor
Chicago, IL 60611
Attention: Mathew E. Norton

Notices and communications to the Company shall be addressed and delivered to the following address:

Exelon Business Services Company, LLC
10 South Dearborn Street
49th Floor
Chicago, IL 60603
Attention: Assistant General Counsel – Real Estate

with a Copy to:

ComEd Real Estate & Facilities
Three Lincoln Centre
Oakbrook Terrace, IL 60181
Attention: Director Real Estate & Facilities

15. GENERAL PROVISIONS.

A. Entire Agreement. This Agreement is the entire agreement between the parties and supersedes all of their prior agreements and negotiations, written or oral, relating to the subject matter of this Agreement.

B. Governing Law. This Agreement is governed by the internal laws, but not the conflict of laws rules, of the State of Illinois.

C. No Waiver. Any act or omission by the District that may constitute a waiver of one or more its rights under this Agreement shall not constitute or be deemed to be a waiver of any other right that the District has or may have in the future under this Agreement.

D. Authority. Each person signing this Agreement hereby states and covenants that he or she has read, and understands, this Agreement, that he or she has the authority to execute this Agreement on behalf of the party whom he or she represents, and that such party intends to be legally bound by the provisions of this Agreement.

THE COMPANY:

By: _____
Name: _____
Its: _____

ATTEST

By: _____
Name: _____
Its: _____

DISTRICT:

By: _____
Name: _____
Its: _____

ATTEST

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, 2018, by _____, the _____ of the **LAKE COUNTY FOREST PRESERVE DISTRICT**, a body politic and corporate, and by _____, the _____ of said District.

Signature of Notary

SEAL

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, 2018, by _____, the _____ of **COMMONWEALTH EDISON COMPANY**, an Illinois corporation, and by _____, the _____ of said corporation.

Signature of Notary

SEAL

My Commission expires: _____

EXHIBIT A

Legal Description of Easement Area

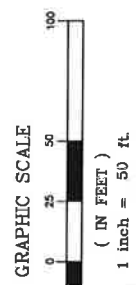
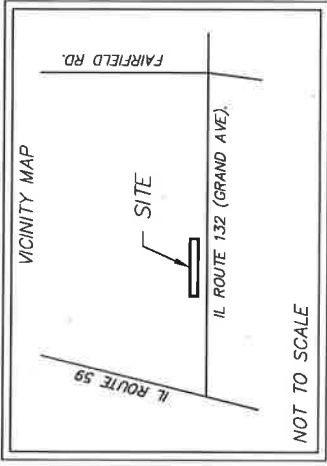
An easement over part of the Southwest Quarter of Section 31, Township 46 North, Range 10 East of the Third Principal Meridian described as follows:

Commencing at the Southeast Corner of Lot M in Schamberger's Subdivision, according to the plat thereof recorded March 18, 1955 in Book 1324 of Deeds Page 305; thence South 00 degrees 36 minutes 47 seconds East along the Southerly extension of the East line of said Lot M, 10.26 feet to the Point of Beginning; thence South 89 degrees 58 minutes 03 second East, 601.69 feet to a line 575 feet Westerly of the West line of the East 21 acres of that part of said Southwest Quarter lying South of the North 12.6 Chains thereof; thence South 00 degrees 00 minutes 10 seconds East along said Westerly line, 35.65 feet to the South line of the Southwest Quarter of said Section 31; thence South 89 degrees 38 minutes 36 seconds West along said South line, 601.28 feet to the Southerly extension of the East line of said Lot M; thence North 00 degrees 36 minutes 47 seconds West along said Southerly extension, 39.74 feet to the Point of Beginning, all in Lake County, Illinois.

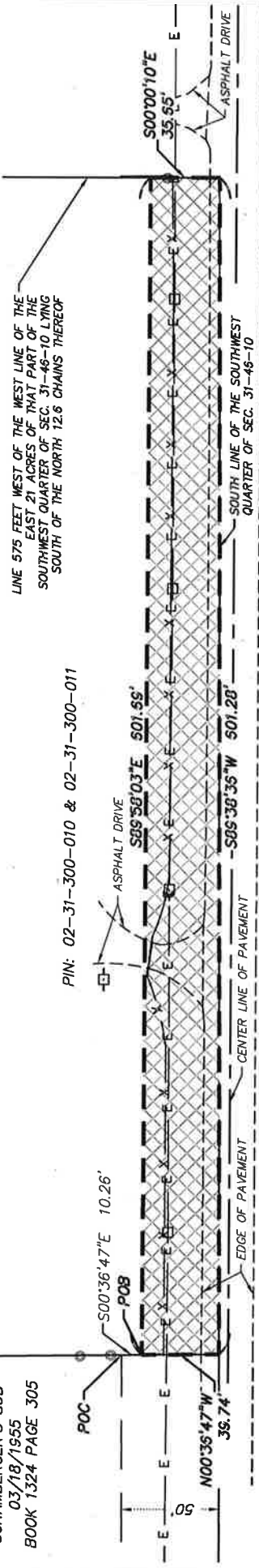
EXHIBIT B
Easement Exhibit

PINS: 02-31-300-010 & 02-31-300-011
 OWNER: LAKE COUNTY FOREST PRESERVE

EXHIBIT A




LOT M
 SCHAMBERGER'S SUB
 03/18/1955
 BOOK 132+ PAGE 305




DATED AT MCHENRY, ILLINOIS ON OCTOBER 31, 2018.

JOHN BOLINE
 ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3755
 LICENSE EXPIRES: NOVEMBER 30, 2018
 EMAIL: JBOLINE@HRCGREEN.COM

 = COMED EASEMENT
 = HEREBY GRANTED

PARCEL CONTAINS 22,673± SF

- NOTES:
- * This map was created for use as an Easement Exhibit.
 - * The field work was completed on 10/04/18.
 - * This IS NOT a Plat of Survey. No assumptions or agreements as to ownership, use, or possession can be conveyed from this document.
 - * No underground improvements have been located unless shown and noted.
 - * No distance should be assumed by scaling.
 - * Bearings based on ISPC East Zone NAD83(2011)

			
R. WARD DILLON, PLS., CFM COMED LAND SURVEY ADMINISTRATOR OAKBROOK CENTER PHONE: (630) 575-7045 CELL: (219) 730-8623 R.DILLON@COMED.COM		ILLINOIS PROFESSIONAL DESIGN FIRM #164-001322 420 N. FRONT STREET, MCHENRY, IL 60050-2135 P. 815.385.1781 WWW.HRCGREEN.COM	
PROJECT NO. 18-000003-243	DATE 10/23/18	REVISION REVISION 1: 10/23/18	EASEMENT EXHIBIT GRANT WOODS FOREST PRESERVE - LAKE VILLA
DRAWN BY JB	CHECKED BY JB	SCALE 1" = 50'	SHEET NO. 1 OF 1