



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: June 26, 2017

MEMO TO: Carol Calabresa, Chair
Planning Committee

FROM: Randall L. Seebach
Director of Planning and Land Preservation

RECOMMENDATION: Recommend approval of a Resolution approving an Easement Agreement with Commonwealth Edison for a permanent utility easement for existing electrical poles at Van Patten Woods Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections

FINANCIAL DATA: Commonwealth Edison (ComEd) will pay the District an easement fee in the amount of \$12,091.68.

BACKGROUND: In November 2016, The District was approached with a request for the replacement of an existing electric pole serving residents near Russell Road and Park Lane in unincorporated Lake County on the northern side of Van Patten Woods Forest Preserve. Through this process, it was discovered that no documentation could be found regarding rights for the existing utility poles between Russell Road and the residents properties. The Planning Committee reviewed a Policy Direction in March 2017 and authorized staff to negotiate an easement agreement with ComEd, granting ComEd a permanent easement to operate and maintain overhead and underground wires, poles and any necessary equipment within an easement corridor at Van Patten Woods Forest Preserve. The easement would “clean up” the missing documentation, by allowing the existing poles to continue in operation.

REVIEW BY OTHERS: Executive Director, Corporate Counsel

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR JULY MEETING
JULY 12, 2017**

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 Van Patten Woods Forest Preserve," and requests its approval.

PLANNING COMMITTEE:

Date:_____ ☐ Roll Call Vote: Ayes:____ Nays:____
☐ Voice Vote Majority Ayes; Nays:____

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

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

WHEREAS, the Lake County Forest Preserve District (the “District”) owns property that is adjacent to Russell Road in Lake County, Illinois known as Van Patten Woods Forest Preserve (the “Property”); and

WHEREAS, Commonwealth Edison (“ComEd”) operates existing electrical poles within the Property that serve residents near Russell Road and Park Lane in Newport Township; and

WHEREAS, ComEd desires that the District grant to it a permanent easement on 0.24 acres of the Property to allow ComEd to operate, maintain, and replace electrical poles, lines and necessary 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 _____, 2017

AYES:

NAYS:

APPROVED this _____ day of _____, 2017

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

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

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 ____ day of July, 2017 (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 Van Patten 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 \$12,091.68, 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 _____, 2017, 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 _____, 2017, 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

03-03-400-010

A 15.00 foot Easement over part of the East half of fractional Section 3, Township 46 North, Range 11 East of the Third Principal Meridian described as follows:

Commencing at the Northeast corner of the Southeast quarter of the Southeast quarter of said fractional Section 3; thence South 00 Degrees 14 Minutes 16 Seconds West along the East line of the Southeast quarter of said Section 3, 249.71 feet to the Point of Beginning; thence continuing South 00 Degrees 14 Minutes 16 Seconds West along said East line, 37.93 feet; thence North 89 Degrees 45 Minutes 44 Seconds West, 15.00 feet; thence North 00 Degrees 14 Minutes 16 Seconds East, 26.74 feet; thence North 71 Degrees 03 Minutes 23 Seconds West, 150.83 feet; thence South 83 Degrees 17 Minutes 40 Seconds West, 491.09 feet to a non-tangent curve and the Southerly Line of Russell Road per Document No. 463188; thence 29.94 feet Northerly along a curve to the right, having a radius of 1106.25 feet, a chord bearing of North 53 Degrees 13 Minutes 45 Seconds East and chord length of 29.94 feet; thence North 83 Degrees 17 Minutes 40 Seconds East, 453.01 feet; thence North 00 Degrees 14 Minutes 16 Seconds East, 19.60 feet; thence South 89 Degrees 45 Minutes 44 Seconds East, 15.00 feet to a line 156.75 feet (9.5 Rods) West of and parallel with the East line of said Southeast quarter; thence South 00 Degrees 14 Minutes 16 Seconds West along said parallel line, 18.80 feet to a line 198.00 feet (12 Rods) South of the North line of Lot 1 in the East ½ of said fractional Section 3; thence South 89 Degrees 52 Minutes 26 Seconds East along said parallel line, 3.63 feet; thence South 71 Degrees 03 Minutes 23 Seconds East, 160.31 feet; thence South 89 Degrees 42 Minutes 23 Seconds East, 1.28 feet to said East line of the Southeast quarter and the Point of Beginning, all in Lake County, Illinois.

EXHIBIT B

Easement Exhibit

