

Board of Park Commissioners Project Summary

Electrical Utility Easement: Downtown Community Center

Approval Request

A formal Electrical Utility Easement is being sought by Berry Maiden Main, LLC for the construction, operation, use, maintenance, repair, renewal, and removal of a line or lines of underground and ground-mounted facilities and equipment (including, without limitation, a current transformer cabinet and private power line extending therefrom) for the transmission and distribution of electrical energy, for fire suppression system, and communication purposes at 233 W. Main Street.

This easement will overlap in part a previously approved Indiana Michigan Power Company Easement at the same location.

Funding Source: n/a

Board Approval:

If it would please the board, I ask for approval of the electrical utility easement presented by Berry Maiden Main, LLC.

Thank you,

Chad Shaw

ELECTRICAL UTILITY EASEMENT AGREEMENT

THIS INDENTURE, made effective as of the ___ day of June, 2022, by and between **Board of Park Commissioners of the City of Fort Wayne**, whose address is 705 E. State Blvd., Fort Wayne, Indiana 46805 (“Grantor”), and **BERRY MAIDEN MAIN, LLC**, an Indiana limited liability company whose address is 10214 Chestnut Plaza Drive, #152, Fort Wayne, Indiana 46814 (“Grantee”).

WITNESSETH:

That Grantee owns certain real estate located in Allen County, Indiana, the legal description of which is attached hereto as Exhibit A and hereby made a part of this document (the “Grantee Tract”); and

That for One and 00/100 Dollar (\$1.00) and other good and valuable considerations in hand paid, the receipt and sufficiency of which Grantor hereby acknowledges, Grantor does hereby grant and convey to Grantee, as the owner of the Grantee Tract, a right-of-way and non-exclusive perpetual easement (collectively, the “Easement”) for the construction, operation, use, maintenance, repair, renewal, and removal of a line or lines of underground and ground mounted facilities and equipment (including, without limitation, a current transformer cabinet and private power line extending therefrom) (collectively, “Facilities”) for the transmission and distribution of electrical energy, for fire suppression system, and for communication purposes *only*, in, on, along, under, over, across, and through a portion of the following described premises (the “Premises”) owned by Grantor situated in Section 2, Wayne Township, Township 30 North, Range 12 East, Allen County, Indiana, to-wit: being the same (or a part of the same) property conveyed to Board of Park Commissioners of the City of Fort Wayne by City of Fort Wayne, Indiana dated May 13, 2016 and recorded on May 18, 2016 in **Document # 2016024704, Parcel # 02-12-02-413-001.000-074**, in the Office of the Recorder of Allen County, Indiana, to which reference is made for further description.

See Easement Exhibit, attached hereto and hereby made a part of this document. It is agreed and understood the Easement is restricted to the area described in the Easement Exhibit.

TOGETHER with the right of ingress and egress to, from and over the Premises, and also the right to cut or trim and/or remove any trees or bushes which may endanger the safety or interfere with the construction and use of said facilities.

The Easement granted by Grantor herein shall be for use by, and for the benefit of, Grantee, as the owner of the Grantee Tract, its lessees and ground lessees, and their respective sublessees, visitors, contractors, guests, permittees, invitees, customers, agents, successors, and assigns. The burdened parcel with respect to the Easement is the Premises, and the benefitted parcel with respect to the Easement is the Grantee Tract.

Grantee shall promptly repair or replace all physical damage on the Premises proximately caused by the construction, operation, and maintenance of Grantee's Facilities.

Grantor warrants that no structure or building shall be erected by Grantor upon the Easement area.

After the completion of said system, Grantor reserves the full use of the land which is not inconsistent with the existence and maintenance of said Facilities but does agree not to change elevation or grade within the area of the Easement without the prior written consent of Grantee.

To the extent permitted by law, Grantee agrees to indemnify, defend, and hold harmless Grantor against all liability, loss (including loss of life), direct damage, injury to property or person, costs or expenses, including claims of lien of laborers, material suppliers or others, for work performed on the Easement by Grantee or otherwise arising from Grantee's exercise of its rights and performance of its obligations under this agreement, except for claims arising as a result of Grantor's own negligent or intentional acts or omissions.

The most recent deed of record for the Grantee Tract was recorded in the Office of the Recorder of Allen County, Indiana as Document Number 2020082772.

It is agreed that the foregoing is the entire contract between the parties hereto, and that this written agreement is complete in all its terms and provisions, shall be binding on their respective representatives, heirs, successors, and assigns, and shall *run with the land* comprising the Premises and the Grantee Tract. This agreement may only be amended by written instrument executed by both parties hereto. This agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, Grantor and Grantee have each caused its corporate name and seal to be hereto affixed as of the date first written above.

Grantor:

Board of Park Commissioners of the City of Fort Wayne

By: _____
William Zielke, Commissioner

By: _____
Justin Shurley, Commissioner

By: _____
Cory Miller, Commissioner

By: _____
Rick Briley, Commissioner

By: _____
Steve McDaniel, Secretary

State of Indiana, County of Allen, SS:

Before me, a Notary Public, in and for said County and State, personally appeared the above named William Zielke, Justin Shurley, and Cory Miller, and ~~Rick Briley~~ (*absent*) known to me to be the Commissioners of the Board of Park Commissioners of the City of Fort Wayne, and Steve McDaniel known to me to be the Secretary of the Board of Park Commissioners of the City of Fort Wayne, and acknowledged the execution of the foregoing Electrical Utility Easement Agreement and affixed thereto the corporate seal of said Board as the free and voluntary act of said Board, for the uses and purposes therein set forth, dated this ____ day of June, 2022.

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

Notary Public

Printed Name

My commission expires _____.

I am a resident of _____ County.

My commission number is _____.

Grantee:

BERRY MAIDEN MAIN, LLC

By: _____
Anthony J. Brita, Authorized Manager

State of Indiana, County of Allen, SS:

Before me, a Notary Public, in and for said County and State, personally appeared the above named Anthony J. Brita, known to me to be the Authorized Manager of Berry Maiden Main, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Electrical Utility Easement Agreement and affixed thereto the company seal of said company as the free and voluntary act of said company, for the uses and purposes therein set forth, dated this ___ day of June, 2022.

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

Notary Public

Printed Name

My commission expires _____.

I am a resident of _____ County.

My commission number is _____.

THIS INSTRUMENT prepared by Henry P. Najdeski, Esq., Attorney No. 20284-02, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Henry P. Najdeski, Esq.

After recorded, mail to: Henry P. Najdeski, Esq., Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802

EXHIBIT A
Grantee Tract

Parcel I

Part of Lot 520 in Hannas Addition, said Lot 520 described as Parcel III in Document #2016047990 in the Office of the Recorder of Allen County, Indiana, this new description was prepared by Micheal C. Voddo, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #16-07-122-2, dated November 21, 2019, more particularly described as follows:

BEGINNING at a mag nail monumenting the Northwest corner Lot 520 of Hannas Addition; thence South 11 degrees 56 minutes 43 seconds East, on the Southwesterly line of said Lot, a distance of 150.00 feet to the Southwest corner of said Lot; thence North 78 degrees 08 minutes 17 seconds East, on the Southeasterly line of said Lot, a distance of 26.58 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 75.39 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 78 degrees 08 minutes 17 seconds East a distance of 3.00 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 74.61 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A" on the Northwesterly line of said Lot; thence South 78 degrees 08 minutes 17 seconds West on the Northwesterly line of said Lot, a distance of 29.58 feet to the Point of Beginning, *containing 0.097 acres of land, more or less*, subject to all legal rights-of-way, easements, restrictions and rights affecting the above-described parcel.

Parcel II

Lot Number 522 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel III

Lot Number 534 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel IV

Lot Number 535 and the West 10 feet of Lot Number 536 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel V

Part of a 14 foot alley for the purpose of begin vacated between Lots 520, 521, 522, 534, 535, and 536 in Hanna's Addition, according to the plat thereof, as recorded in Deed Book A, page 17 in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of Lot 522 in Hanna's Addition; thence North 11 degrees 56 minutes 43 seconds West (assumed bearing and basis of bearing for all bearings in this description), a distance of 14.00 feet to the Southwest corner of Lot 534; thence North 78 degrees 08 minutes 17 seconds East, on the Southeast line of Lots 534, 535, and 536, a distance of 129.58 feet; thence South 11 degrees 56 minutes 43 seconds East a distance of 14.00 feet to the Northwest line of Lot 520; thence South 78 degrees 08 minutes 17 seconds West, on the Northwest line of lots 520, 521, and 522, a distance of 129.58 feet to the Point of Beginning, *containing 0.042 acres of land, more or less*.

Parcel VI

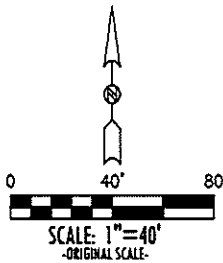
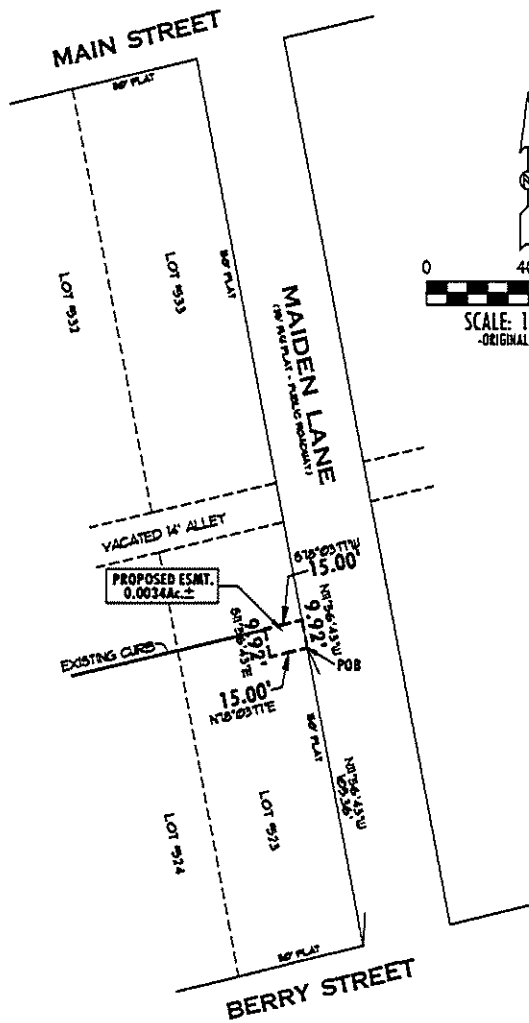
The East Forty (40) feet of Lot Number 536 in Hanna's Addition to the City of Fort Wayne, Indiana, according to the recorded plat thereof.

Parcel VII

Lot Numbered five hundred twenty one (521) in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, recorded in Deed Record C, pages 525-526, in the office of the Recorder of Allen County, Indiana.

EASEMENT EXHIBIT

(See attached)



PROPOSED ELECTRIC UTILITY EASEMENT EXHIBIT

An Electric Utility easement being part of Lot Number 523 in Hanna's Addition, according to the plat thereof recorded in Deed Book A, page 17 in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of Lot Number 523; thence North 11 degrees 56 minutes 43 seconds West (assumed bearing and basis of bearing for all bearings in this description), on the East line of said Lot Number 523, a distance of 105.36 feet to the *POINT OF BEGINNING*; thence continuing North 11 degrees 56 minutes 43 seconds West, on said East line, a distance of 9.92 feet; thence South 78 degrees 03 minutes 17 seconds West a distance of 15.00 feet; thence South 11 degrees 56 minutes 43 seconds East a distance of 9.92 feet; thence North 78 degrees 03 minutes 17 seconds East a distance of 15.00 feet to the *Point of Beginning*, containing 0.0034 acres (149.0 square feet) of land, more or less.

JOB DESCRIPTION:
ELECTRIC UTILITY EASEMENT
PT. OF LOT 523 HANNAS ADDITION, ALLEN CO., IN

ANDERSON SURVEYING, INC.

Registered Professional Engineers and Land Surveyors
 Indiana Land Surveying Firm Identification Number: 29A

1324 Henry Avenue
 Fort Wayne, IN 46808
 Phone: (260) 483-1724
 Fax: (260) 483-0855
 Toll Free: (888) 483-1724

1947 E. Schug Road
 Columbia City, IN 46725
 Phone: (260) 691-3425
 Fax: (260) 482-0855



Michael C. Vodka

5/27/2022

DESCRIPTION NUMBER: 16-07-122-22