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Little Calumet River Basin  
Development Commission  
6100 Southport Road  
Portage, IN 46368

EASEMENT AGREEMENT  
EAST BREACH REMEDIATION

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

97 OCT -8 PM 3:41

MORRIS W. CARTER

This Agreement, made and entered into by and between Northern Indiana Public Service Company, an Indiana Corporation, hereinafter called "NIPSCO" and the Little Calumet River Basin Development Commission, hereinafter called the "Commission."

WITNESSETH:

For and in consideration of One Dollar (\$1.00) and other good and valuable consideration the receipt of which is hereby acknowledged, NIPSCO, to the extent its title permits it to do so, does hereby grant to the Commission easements upon and across NIPSCO's property located in Lake County, Indiana, described as follows:

- Flowage Easement (Exhibit A)
- Permanent Drainage Ditch Easement (Exhibit B)
- Temporary Work Area Easement (Exhibit C)
- Survey of Easements (Exhibit D)

**FILED**  
STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
MORRIS W. CARTER  
AUDITOR  
97 OCT -8 PM 3:41

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The rights and privileges granted hereunder to the Commission are subject and subordinate at all times during the lifetime of this agreement to the paramount right of NIPSCO to use the easement area for all public utility and corporate purposes and to the right of NIPSCO to enter upon the easement area at any time, and from time to time for the purposes of constructing and installing, maintaining and operating gas pipelines and electric lines and any and all equipment and facilities which it deems necessary or advisable in its public utility and corporate operations, all without any liability to the Commission or Commission's property when located upon the easement area.

KEY # 49-57-10

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005525

It is understood by the Commission that at all times during the construction, maintenance, and repair of said flood protection levee and use of said access, the electric lines of NIPSCO are energized and thereby create a danger to people working in the vicinity of said electric lines should they come in contact with such electric lines. The Commission specifically agrees to indemnify and save NIPSCO harmless from any claims arising from the Commission, its assignees, or contractors coming in contact with the electric lines of NIPSCO during the construction, operation, maintenance of such flood protection, unless such claim arises due to the negligent or intentional act of NIPSCO, or its agent, contractors or employee.

The Commission, its assignees, and contractors shall not construct or maintain said flood protection levee above the maximum height of fifteen (15) feet above existing ground elevation existing at the time of this grant. Notwithstanding the previous sentence, the Commission, its assigns, and contractors shall at all times maintain a minimum clearance of at least twenty-one (21) feet between all points on the flood protection levee to be constructed hereunder and the lowest electric power line of NIPSCO.

The Commission, its assignees, and contractors shall use the easement area for its own use in constructing and maintaining a flood protection levee. The Commission, its assigns and contractors during the period of construction agree to take whatever precautions are necessary to prevent public access to the easement area so as to separate the public from the area of NIPSCO's electric power lines.

The Commission, its assignees, and contractors shall use and maintain the easement area in a manner not to injure, damage or interfere with the existing poles, towers, foundations, wires, cables, anchors, pipes, mains, valves, equipment and facilities of NIPSCO, its assignees, grantees

and licensees.

The Commission hereby agrees to defend and indemnify and save NIPSCO harmless from any and all liability, claims and expenses including attorney's fees, that may arise or may be made for any injury, loss of life and loss or damage of any kind or nature whatsoever, including damage to property, either to NIPSCO or the Commission, its agents, servants or business invitees, or to any other persons, corporations or organizations resulting from or in any way connected with or in consequence of, the requested use or occupancy of the easement area by Commission, its' agents, servants, employees or invitees, including ingress thereto or egress therefrom; and further, to reimburse, pay and compensate NIPSCO for any such damage due to the use herein sought by the Commission and to defend any lawsuits against NIPSCO seeking such damages unless caused by the negligence of its agents, contractors or employees. The above paragraph shall not apply to the United States Government.

The Commission, at its own cost and expense, shall procure and keep in full force and effect during the perpetual levee easement, insurance for the protection and benefit of the Commission and NIPSCO both individually and jointly, naming Northern Indiana Public Service Company as an addition insured. Insurance shall be in an amount equal to or in excess of \$500,000 for each occurrence for personal injury coverage and in an amount equal to or in excess of \$500,000 property damage coverage. The Commission shall deliver to NIPSCO copies of said policies or certificates thereof prior to occupying the easement area. Should it become necessary, NIPSCO reserves the right to increase the above minimum insurance coverage at any time during the term of this agreement, not to exceed \$1,000,000.

The Commission further agrees that no mechanic's lien shall be permitted to accrue or be filed against any portion of NIPSCO's premises for or on account of any action, matter or thing required or permitted to be done by the Commission under this agreement and in the event that any such mechanic's lien does accrue or is filed against said premises, NIPSCO may take such steps and make such reasonable payments as are necessary to extinguish said mechanic's lien and the Commission shall pay NIPSCO, upon being billed therefore, the amount that NIPSCO was required to pay and expend in order to extinguish said lien.

The Commission, its assignees, and contractors shall provide and maintain to the specifications of NIPSCO adequate barriers and safeguards for poles, towers, gas mains and any other structures, if any, of NIPSCO or any other persons or corporations which may from time to time be located on or near enough to the easement area to be endangered by traffic using the easement area during construction, operation and maintenance.

In the event NIPSCO requires to enter upon the easement area for the sole purpose of new construction for constructing, installing, maintaining and operating pipelines, and electric lines in, on, over or under the levee system, the Commission and the U.S. Army Corps of Engineers must be notified. The construction must be coordinating with the Corps prior to commencing any construction. In the event of emergency, NIPSCO may enter the easement area for the purpose of repairs to preserve the public health and safety, without giving prior notice to the Commission.

The Commission agrees that no contaminated or hazardous materials, as defined under CERCLA and RECRA, shall be used in construction of the flood protection levee or elsewhere on the easement area; and in the event of breach of this provision by the Commission, the Commission shall indemnify and protect NIPSCO against any liability arising from such breach,

including but not limited to, reimbursement of the cost of defending claims, removal costs and any fines or costs associated therewith.

No structures, except the levee and appurtenances, shall be constructed on the easement area. The Commission shall permit no holes or obstructions on the easement area which could create a hazard of any kind. The Commission shall keep and maintain the easement area in a clean and orderly condition at all times. The Commission shall maintain a minimum of four (4) feet of cover over NIPSCO's gas mains located within the easement area.

NIPSCO may have an inspector present at any time during the construction, installation, maintenance, or repair of said flood protection levee or during other work on the easement area for the sole purpose of assuring that said construction will not interfere with NIPSCO's operation of its utility facilities. The Commission or its assignees or contractors shall reimburse NIPSCO for the expense of such inspector upon receipt of billing from NIPSCO. The Commission shall reimburse NIPSCO for the expense of an inspector upon receipt of billing from NIPSCO. It is mutually agreed that the presence of an inspector shall not relieve the Commission from any liability, claim or obligation hereunder.

The Commission or its assignees or contractors shall, at its own expense, secure any permits or other consents required by law or ordinance of any municipality or other public body having jurisdiction over the use and construction herein contemplated and shall at all times comply with all laws and regulations, both local and general, which affect the installation, construction, maintenance, operation and use of said flood protection levee.

Failure by the Commission to comply with any of the terms and conditions herein contained shall constitute a default; and if such default shall continue more than fifteen (15) days

from the date notice of such default is mailed by NIPSCO to the Commission, as provided below, then NIPSCO shall have the right, without further notice to prosecute legal action for injunction, mandate, specific performance and/or damages in a court of competent jurisdiction with cost, interest and attorney's fees to the prevailing party.

All notices or demands hereunder may be served on NIPSCO by certified mail addressed to: Cardinal Property Management, 833 West Lincoln Highway, Schererville, IN 46375; or upon the Commission addressed to: Little Calumet River Basin Development Commission, 6100 Southport Road, Portage, IN 46368.

This agreement and its privileges shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 1 day of October, 1997.

NORTHERN INDIANA PUBLIC SERVICE COMPANY

BY:

Jerry M. Springer  
JERRY M. SPRINGER

ATTEST:

Nina M. Rausch

NINA M RAUSCH

LITTLE CALUMET RIVER BASIN DEVELOPMENT COMMISSION

BY:

Robert E. Huffman  
Robert E. Huffman

ATTEST:

Dan Gardner

Dan Gardner

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared JERRY M. SPRINGER and NINA M RAUSCH, the V.P. FINANCE and SECRETARY, respectively, of Northern Indiana Public Service Company, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and notarial seal this 23 day of SEPT, 1997.

John R. Carr  
JOHN R. CARR Notary Public

My Commission expires:

MAY 2, 1999

Resident of LAPORTE County

John R. Carr, III  
Notary Public, State of Indiana  
Laporte County  
My Commission Expires 05/02/99

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert E. Huffman and Dan Gardner, the Chairman and Executive Director, respectively, of the Little Calumet River Basin Development Commission, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and notarial seal this 1 day of October, 1997.

Lois M Casale  
Notary Public

My Commission expires:  
LOIS M CASALE  
NOTARY PUBLIC STATE OF INDIANA  
PORTER COUNTY  
MY COMMISSION EXPIRES JULY 24, 1993

Resident of LAKE County

**EXHIBIT A**

**PERMANENT LEVEE EASEMENT**

A perpetual and assignable right and easement in the land described in Exhibit A-1, in connection with the Little Calumet River, Indiana Local Flood Protection and Recreation Project as authorized by Section 401 of the Water Resources Development Act of 1986 (P.L. 99-662) to construct, maintain, repair, operate, patrol and replace a flood protection levee, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject however to existing easement for public roads and highways, public utilities, railroads and pipelines as long as they do not interfere with the project.



*PERMANENT LEVEE EASEMENT*

*A parcel of land in the Northeast Quarter of Section 14, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows:*

*Commencing at the Northwest corner of said Section 14; thence South 89°00'37" East (State Plane grid bearing), 5168.03 feet; thence South 00°00'00" West, 718.91 feet to the POINT OF BEGINNING;*

*thence South 60°57'22" East, 64.44 feet;*

*thence South 00°33'27" East, 1219.40 feet;*

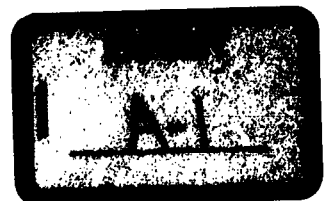
*thence South 85°16'41" West, 219.52 feet;*

*thence North 00°15'08" East, 152.14 feet;*

*thence North 84°48'00" East, 145.42 feet;*

*thence North 00°15'51" East, 1103.39 feet to the POINT OF BEGINNING,*

*containing 2.359 acres, more or less.*



## **EXHIBIT B**

### **TEMPORARY WORK AREA EASEMENT**

A temporary and assignable easement and right-of-way in on, over and across the land described in Exhibit B-1, in connection with the Little Calumet River, Indiana Local Flood Protection and Recreation Project as authorized by Section 401 of the Water Resources Development Act of 1986 (P.L. 99-662), as amended, for a period not to exceed two (2) years, beginning with date of possession of the land is granted to the Little Calumet River Development Commission, its representatives, agents and contractors as a work area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the Little Calumet Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

### EAST TEMPORARY WORK AREA EASEMENT

*A parcel of land in the Northeast Quarter of Section 14, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows:*

*Commencing at the Northwest corner of said Section 14; thence South 89°00'37" East (State Plane grid bearing), 5224.38 feet; thence South 00°00'00" West, 749.22 feet to the POINT OF BEGINNING;*

*thence South 60°57'22" East, 11.50 feet;*

*thence South 00°33'26" East, 1222.93 feet;*

*thence South 84°55'51" West, 230.42 feet;*

*thence North 03°21'49" East, 11.42 feet;*

*thence North 85°16'41" East, 219.52 feet;*

*thence North 00°33'27" West, 1219.40 feet to the POINT OF BEGINNING, containing 0.335 acres, more or less.*

### WEST TEMPORARY WORK AREA EASEMENT

*A parcel of land in the Northeast Quarter of Section 14, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows:*

*Commencing at the Northwest corner of said Section 14; thence South 89°00'37" East (State Plane grid bearing), 5158.05 feet; thence South 00°00'00" West, 713.54 feet to the POINT OF BEGINNING;*

*thence South 60°57'22" East, 11.42 feet;*

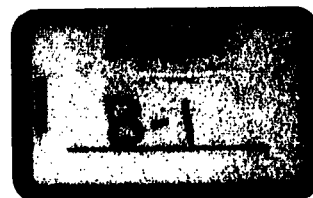
*thence South 00°15'51" West, 1103.39 feet;*

*thence South 84°48'01" West, 145.42 feet;*

*thence North 03°34'21" East, 10.75 feet;*

*thence North 85°01'47" East, 134.70 feet;*

*thence North 00°15'50" East, 1099.71 feet to the POINT OF BEGINNING, containing 0.286 acres, more or less.*



## EXHIBIT C

### **FLOWAGE EASEMENT (Occasional Flooding)**

The perpetual right, power, privilege and easement occasionally to overflow, flood, and submerge the land described in Exhibit D-1, in connection with the operation and maintenance of the Little Calumet River, Indiana Local Flood Protection and Recreation Project as authorized by Section 401 of the Water Resources Development Act of 1986 (P.L. 99-662), together with all right, title, and interest in and to the structures and improvements now situate on the land, except fencing; provided that no structures for human habitation shall be constructed or maintained on the land, that no other structure shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and/or no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads, and pipelines; reserving however to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easements hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

### FLOWAGE EASEMENT

A parcel of land in Section 14, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Section 14; thence South 89°00'37" East, 5224.56 feet; thence South 00°00'00" West, 768.43 feet to the POINT OF BEGINNING; thence South 59°32'38" East, 708.77 feet; thence South 00°42'22" East, 320.52 feet; thence South 10°21'27" West, 461.54 feet; thence South 22°40'58" West, 459.07 feet; thence South 33°03'45" West, 370.54 feet; thence South 48°28'57" West, 280.79 feet; thence South 37°06'14" West, 372.81 feet; thence South 70°18'08" West, 226.84 feet; thence South 61°22'19" West, 257.28 feet; thence South 52°59'25" West, 376.13 feet; thence South 36°11'52" West, 211.73 feet; thence South 45°44'31" West, 382.75 feet; thence South 72°32'21" West, 264.69 feet; thence South 75°45'27" West, 342.36 feet; thence South 78°07'14" West, 464.02 feet; thence North 46°00'23" East, 3133.67 feet; thence North 01°17'29" West, 79.86 feet; thence North 85°16'41" East, 219.52 feet; thence North 00°33'27" West, 1200.19 feet to the POINT OF BEGINNING, containing 54.668 acres, more or less.

