


WHITESTOWN



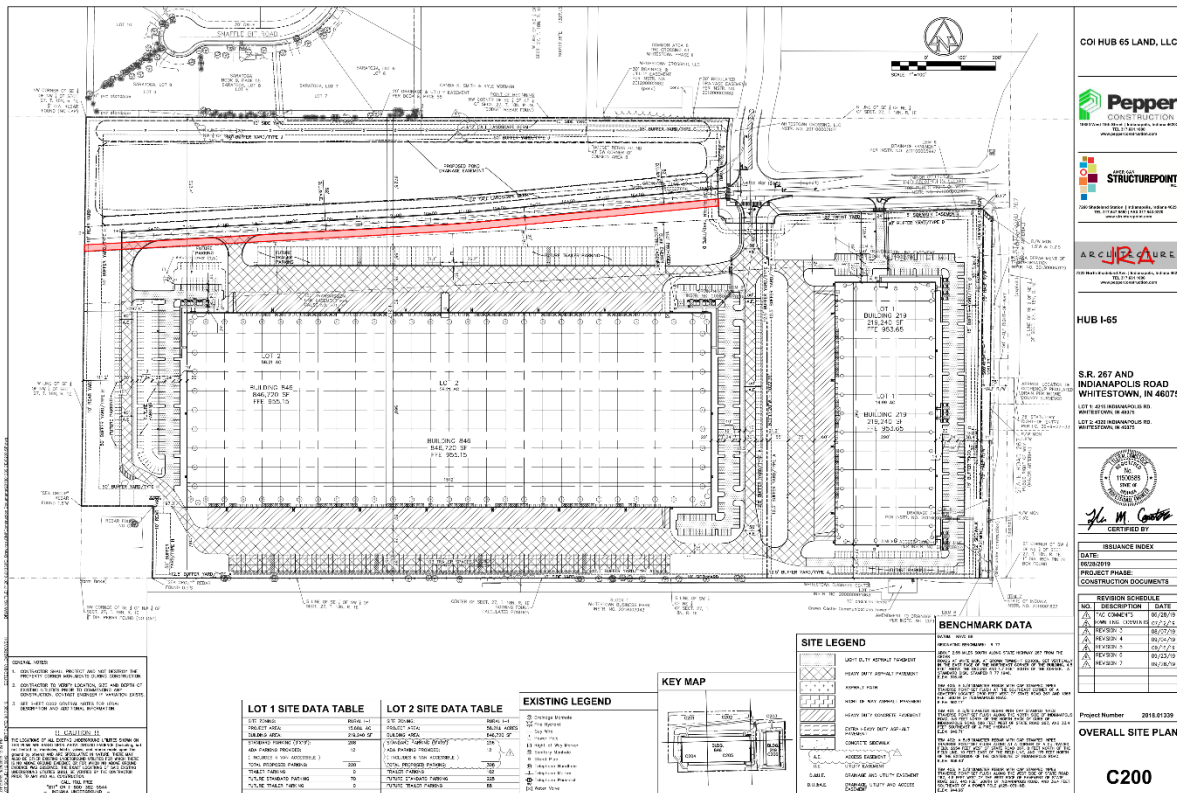
PUBLIC WORKS

6210 Veterans Dr., Rm. 600
Whitestown, IN 46075
317-733-8584

Consider Sanitary Sewer Encroachment Agreement with BREMC

The proposed encroachment agreement between the BREMC and Whitestown is to allow the installation of BREMC power facilities within the Whitestown Utility Sanitary Sewer Easement at the Hub I-65 Development. Below is an exhibit of the location of the sanitary sewer easement.

Hub I-65 Development with Sanitary Sewer Easement Highlighted



Document Cross Reference Number _____

**ENCROACHMENT CONSENT AGREEMENT
TOWN OF WHITESTOWN, INDIANA**

This **Encroachment Consent Agreement (“Agreement”)** is entered into on the dates set out below between the Town of Whitestown, Indiana, by and through the Department of Public Works (**the “Town”**) and Boone REMC (**“Occupant”** and, collectively with the Town, **the “Parties”**).

WITNESS THAT:

WHEREAS, there exists a certain utility easement in favor of the Town (**the “Easement”**), recorded in the Office of the Boone County, Indiana Recorder as instrument number 2019011942, and generally located:
part of Lot 2 of Jig Farms Subdivision, per plat thereof, recorded in the Office of the Recorder of Boone County, Indiana; and

WHEREAS, Occupant, at its own expense, wishes to utilize and/or encroach upon the Town’s Easement for the purpose of installing its own facilities as described below: poles, towers, supporting structures, conductors, cross-arms, wires, cables, transformers, anchors, guys, grounding systems, and all other appurtenant equipment and fixtures attached thereto and all necessary or useful facilities and equipment for generating, transforming, transmitting, and distributing electric energy, along with telecommunication, video data, fiber, and other information lines used in, along, on, over, through, across, and under the Easement Area (**the “Encroachment”**); and

WHEREAS, the Town is willing to consent to the installation of the Encroachment under the terms and conditions as set out in this Agreement.

THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

1. The Town consents to the Occupant’s installation, maintenance, and/or replacement of the Encroachment within the Easement as outlined below.

2. The placement of the Encroachment shall comply with all drawings submitted by Occupant to the Town, and any additional requirements or restrictions placed by the Town.
3. The Occupant shall comply with all applicable laws and Town ordinances and shall obtain all permits required by the Town for the installation, maintenance, and/or replacement of the Encroachment, including complying with Indiana's "Call Before You Dig" law (Ind. Code ch. 8-1-26).
4. The Town shall have no duty to maintain or relocate the Encroachment for any reason, including if necessitated by any current or future public improvement of the right-of-way, improvement, repair, or maintenance of the Easement, or other public works project.
5. In the event it becomes necessary for all, or any part of, the Encroachment to be relocated to accommodate any current or future public improvement, improvement, repair, or maintenance of the Easement, or other public works project, the Town may notify the Occupant of the need to relocate the Encroachment if it is aware that the Encroachment is in conflict.
6. If, after receiving notice from the Town, the Occupant fails to relocate the Encroachment, the Town shall be permitted to commence any work within the Easement, and in the event that the Encroachment is damaged or in any way made inoperable by said work, the Town, its agents, successors, or assigns shall have no liability to the Occupant for any direct, indirect, or consequential damages, arising out of the Occupant's use, or lack of use, of the Encroachment.
7. The Occupant acknowledges that the Town's consent is only broad enough to cover the Town's own property rights in the Encroachment area. The Occupant accepts all responsibility for obtaining consents from any other entities that may have legal rights infringed by the Encroachment. The Occupant shall have no cause of action against the Town and shall indemnify and hold the Town harmless for any direct, indirect, or consequential damages arising out of this consent to Encroachment. The Occupant shall have no recourse against the Town to recover damages to the Encroachment made by a third party performing either permitted or unpermitted work within the Easement. The Occupant shall indemnify and hold the Town harmless for any legal actions brought against the Town as a direct or indirect result of consenting to the Encroachment within

the Easement. The Occupant shall reimburse the Town for all legal costs incurred in the enforcement of this Agreement and/or in defending the Town against any legal actions brought against the Town, or naming the Town as a party, which are a direct or indirect result of the Town consenting to the Encroachment within the Easement.

8. THE OCCUPANT ACCEPTS THE EASEMENT “AS IS, WHERE IS, AND WITH ALL FAULTS,” AND THE TOWN FURTHER DISCLAIMS ALL WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS OF TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
9. This Agreement and any Exhibits or Attachments to the Agreement set forth all of the covenants, promises, agreements, conditions, and understanding between the Town and the Occupant concerning the matters set forth in this Agreement and there are no covenants, promises, agreements, conditions, or understandings, either written or oral, between the Parties with respect to such matters other than are set forth in this Agreement.
10. The failure of either Party to enforce any provision of this Agreement at any time shall in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement, or any part of this Agreement, nor the right of any Party thereafter to enforce each and every such provision.
11. Any alteration, amendment, change, or addition to this Agreement must be reduced to writing in a form similar to this Agreement and signed by both Parties.
12. This Agreement shall be governed by, and all terms and covenants in this Agreement shall be interpreted in accordance with, the laws of the State of Indiana.
13. The Parties agree that this Agreement may be recorded in the offices of the Boone County Recorder, Boone County, Indiana.
14. In the event that any provision of this Agreement shall be construed as or declared invalid, unenforceable, or unconstitutional, then such invalidity, unenforceability, or unconstitutionality shall not affect the remaining provisions of this Agreement, and said provisions shall be given full force and effect as though the invalid, unenforceable, or unconstitutional provision did not exist.
15. All notices under this Agreement shall be mailed to the following addresses:

FOR THE TOWN:

Department of Public Works of the
Town of Whitestown
Whitestown Municipal Complex
6210 Veterans Drive
Whitestown, IN 46075

FOR THE OCCUPANT:

Boone REMC
PO Box 563
Lebanon, IN 46052

Entered into this 16th day of October 2020,

By: Boone REMC


Signature

William J. Conley, President & CEO
Printed Name and Title

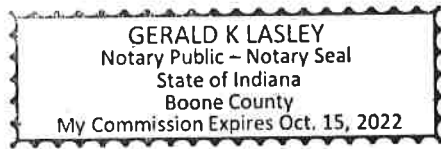
STATE OF INDIANA

COUNTY OF Boone

SUBSCRIBED AND SWORN to me, a Notary Public in and for said County and State, this
21 th day of October, 2020.


Signature

Gerald K. Lasley. My Commission Expires: 10/15/2022
Printed Name



By: The Department of Public Works of the Town of Whitestown, Indiana.

_____,
Danny Powers, Director

STATE OF INDIANA

COUNTY OF _____

SUBSCRIBED AND SWORN to me, a Notary Public in and for said County and State, this
_____th day of _____, 20_____.

_____,
Signature

_____. My Commission Expires: _____
Printed Name

Document prepared by Department of Public Works, Whitestown Municipal Complex, Room 600, 6210 Veterans Drive, Whitestown, IN 46075.

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