

**UTILITY LOCATION AGREEMENT BY AND BETWEEN

AND
THE TOWN OF WHITESTOWN, INDIANA**

This Utility Location Agreement (“Agreement”) is made and entered into on this _____ day of _____, 20____, by and between _____ (“Utility”) and the Town of Whitestown, Indiana (“Whitestown” or “Town”). The Utility and the Town may sometimes be referred to collectively as the “Parties” or individually as a “Party.”

WHEREAS, Utility recently requested an easement(s) on property owned by the Town, as described in the property and legal description in Exhibit A attached hereto (the “Easement”); and

WHEREAS, in exchange for an Easement from the Town to the Utility, the Utility agrees to the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the Parties hereby agree as follows:

1. In return for the Utility’s receipt from the Town of a non-exclusive Easement for purposes of placing underground utility facilities on Town property in a form approved by the Town, the Utility agrees that, if in the future, the Town in its sole discretion, widens or redesigns the road in a manner affecting the Easement, the Utility will relocate its facilities or other facilities located within the right of way / easement within one-hundred and eighty (180) days of the Town’s request, or such other time as may be reasonably necessary for the relocation provided that the Utility timely and prudently pursues the start and completion of such work, at no cost to the Town, provide that the Town has provided the new easement or right-of-way as set forth in Paragraph 2.

2. The Town will provide a new easement or right-of-way for the relocated facilities described in Paragraph 1.

3. The Parties agree, subject to any further proceedings required by law, to take such actions, including but not limited to, executing the required instrument(s) and delivery of other such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

4. Each Party represents and warrants that it has full legal right, power and authority, under currently applicable law, to execute, deliver and perform its obligations under this agreement upon proper approval by the Whitestown Town Council.

5. This Agreement and each of the Parties’ respective rights and obligations under this Agreement shall be binding on and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns. The Utility may terminate this Agreement by

abandoning the Town's easement / right of way and removing any of its facilities. Termination will not relieve the Utility from any liability or paying any damages for which Utility is responsible under Section 12.

6. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

7. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Indiana, without reference to its choice of law principles.

8. Except as set forth to the contrary herein, any right or remedy of the Utility or Town shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

9. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement.

10. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the Easement and supersedes all prior agreements relating to the Easement to the extent in conflict herewith.

11. The relationship between the Utility and Town shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to state or federal tax purposes. Either party, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

12. In the event of the negligent or wrongful act or omission of the Utility, the Utility's breach of any provision of this Agreement, or the Utility's failure to fulfill any provisions or responsibility provided herein within thirty (30) days of written notice sent by the Town, the Utility shall be liable to the Town for liquidated damages in the amount of two-hundred fifty dollars (\$250) per day, and the Utility shall be responsible for reasonable attorneys' fees and court costs incurred by Whitestown in connection with the collection or attempt to collect, any damages arising from this Agreement, in which the Town is a prevailing party. This provision shall survive any termination of this Agreement.

13. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written, subject to approval by the Whitestown Town Council.

Town of Whitestown, Indiana

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

3704364

EXHIBIT A

Easement Description

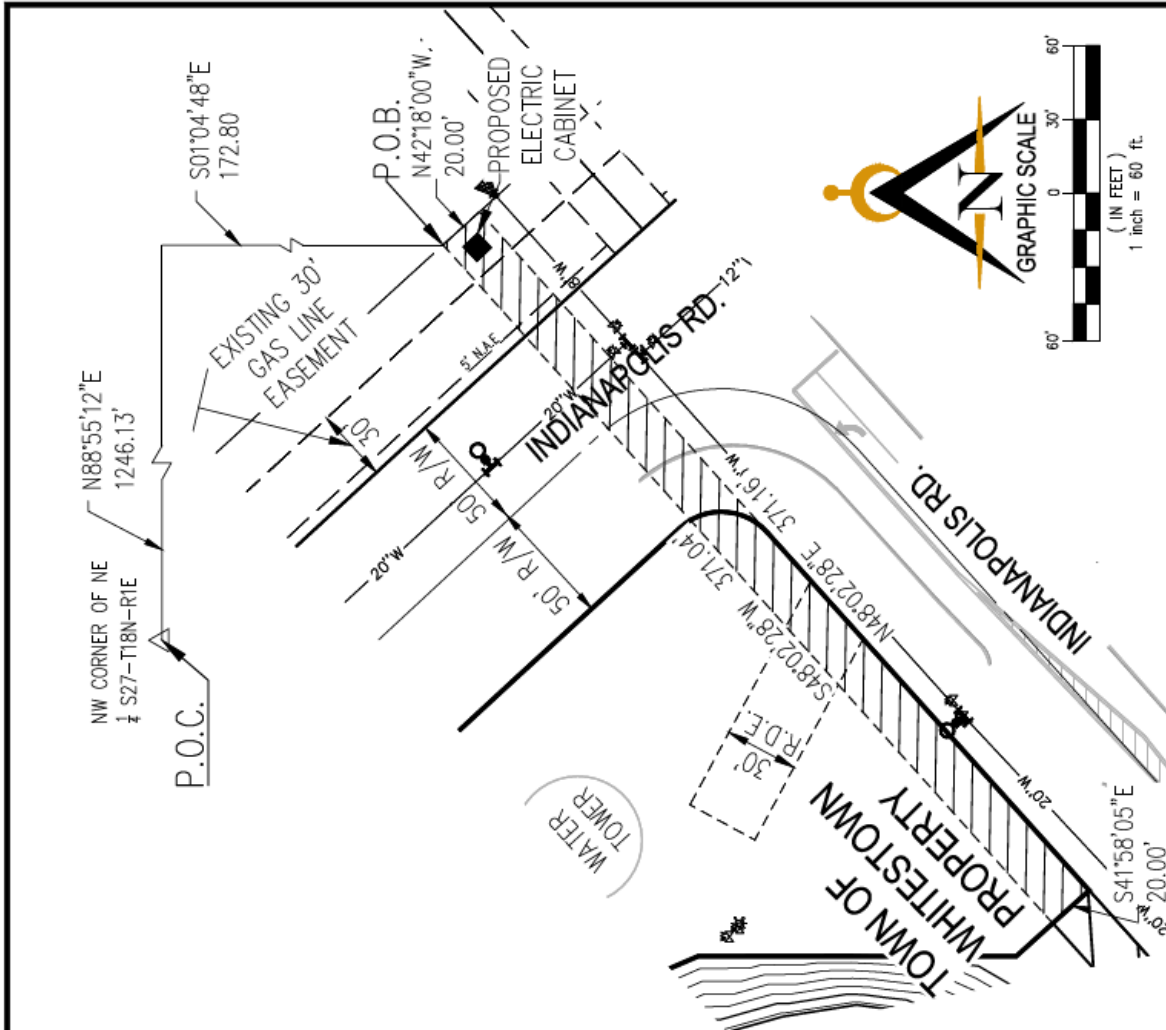


EXHIBIT A

A PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 18 NORTH, RANGE 1 EAST OF THE SECOND PRINCIPAL MERIDIAN, PERRY TOWNSHIP, BOONE COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER, THENCE N 88°55'12" E 1246.13 FEET, THENCE S 01°04'48" E 172.80 FEET TO THE POINT OF BEGINNING, THENCE S 48°02'28" W 371.04 FEET, THENCE S 41°58'05" E 20.00 FEET, THENCE N 48°02'28" E 371.16 FEET, THENCE N 42°18'00" W 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.1703 ACRES, MORE OR LESS. BASIS OF BEARING IS INDIANA STATE PLANE WEST COORDINATE SYSTEM.

THIS DESCRIPTION WAS DONE WITHOUT BENEFIT OF A FIELD SURVEY.



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