

**RESOLUTION RB-8-24**  
**A RESOLUTION APPROVING AN EASEMENT AGREEMENT AND SUBSEQUENT**  
**PROPERTY TRANSFER FOR A WATER TOWER**  
**(15251 Olio Road)**

WHEREAS, the City of Noblesville by and through the Board of Public Works and Safety (“Board”) leases from the Noblesville Building Corporation (“NBC”) certain property located at 15251 Olio Road (the “Property”) on which a fire station (the “Fire Station”) is currently situated; and,

WHEREAS, Indiana-American Water Corporation desires to construct a water tower on a portion of the Property; and

WHEREAS, the City of Noblesville (“City”) has determined that there is sufficient space on the Property to provide a location for Indiana American Water Corporation to construct its water tower and related facilities; and

WHEREAS, the construction of the water tower and related facilities at the Property will not interfere with the operation of the Fire Station except that the water tower would be installed on the location of an existing geo thermal field for the Fire Station;

WHEREAS, in exchange for providing an easement to locate the water tower on a portion of the Property, Indiana American Water has agreed to pay to have the geo thermal field decommissioned and a new HVAC system installed for the Fire Station; and

WHEREAS, the City has obtained quotes for the HVAC work, which will be paid for by Indiana American Water; and

WHEREAS, the City will need to consent to the Easement prior to it becoming effective; and

WHEREAS, there are currently outstanding bonds concerning the Property (the “Bonds”); and

WHEREAS, once the Bonds are paid off and the debt extinguished, Indiana American Water Corporation would acquire fee simple title to that portion of the Property on which the Water Tower will be constructed; and

WHEREAS, attached to this resolution as Exhibit 1 is a form Easement Agreement that would provide the easement for the construction of the water tower and related operations of the facilities as well as the future ownership transfer upon expiration/extinguishment of the Bonds; and

WHEREAS, the Board for the NBC has reviewed and approved the Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA, AS FOLLOWS:

Section 1. The Board hereby consents to the Easement Agreement, attached hereto as Exhibit 1, and as approved by the NBC.

Section 2. The Mayor and/or his designees, are hereby authorized to take all action necessary or appropriate to execute the Agreement including, but not limited to, executing the Agreement, amending said Agreement, executing any and all ancillary agreements contemplated by the Easement Agreement, and/or taking any and all other actions on behalf of the City as may be necessary or appropriate to carry out the purposes of this resolution and/or the Agreement.

Section 3. This resolution shall be in full force and effect after its passage and execution as provided by law.

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this 13<sup>th</sup> day of February 2024.

  
\_\_\_\_\_  
JACK MARTIN, PRESIDENT

  
\_\_\_\_\_  
JOHN DITSLEAR, MEMBER

\_\_\_\_\_  
LAURIE DYER, MEMBER

  
\_\_\_\_\_  
ROBERT J. ELMER, MEMBER

\_\_\_\_\_  
RICK L. TAYLOR, MEMBER

ATTEST:

  
\_\_\_\_\_  
EVELYN L. LEES, CLERK  
CITY OF NOBLESVILLE, INDIANA



**DEED CROSS REFERENCE:** \_\_\_\_\_

**EASEMENT WITH OPTION TO PURCHASE**

THIS EASEMENT WITH OPTION TO PURCHASE (this “**Easement**”) is made as of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between the Noblesville Building Corporation, a(n) Indiana Not-for-Profit Corporation (“**Grantor**”), and Indiana-American Water Company, Inc, a (n) Indiana Corporation (“**Grantee**”), with consent from the City of Noblesville, Indiana (“**Consenting Party**”).

**1. EASEMENT AREA.** Grantor hereby grants to Grantee, , upon the terms, covenants and agreements and subject to the conditions set forth herein, an easement to approximately a 3.119 acre premises located on a tract of land being part of property with a current address of 15251 Olio Road in the City of Noblesville, County of Hamilton, State of Indiana and being more particularly described in Exhibit A as the “Easement Land Area” and shown outlined on Exhibit B together with all improvements now existing or hereafter erected thereon and all rights, appurtenances, privileges, benefits, rights of way and easements benefiting the Easement Area thereunto belonging (collectively, the “**Easement Area**”). In addition to the Easement Area for the Easement Land Area description, Grantor hereby also grant to Grantee a permanent and perpetual drainage easement for drainage purposes and an access easement for ingress and egress to the Easement Area. The location of the drainage easement and the access easement are described on the attached Exhibit A under the headings “Drainage Easement Description” and “Access Easement Description” respectively. The access easement shall be only for ingress and egress to the property after construction of the water tower on the Easement Area is completed (“Access Easement”). Grantee shall maintain the Access Easement and ensure that it is free from obstructions at all time. Grantor shall not unreasonably impede Grantee’s use of the Access Easement. The drainage easement shall only be for drainage purposes. (“Drainage Easement). In the event Grantee damages Grantor’s property in the drainage easement area or the access easement area, Grantee shall immediately restore such property to as near its original condition as possible. If Grantee fails to so restore the property within ten (10) days after notice from Grantee or Consenting Party to do so, then Grantee or Consenting Party may enter and complete the work and Grantee shall be responsible to pay all costs and fees incurred by the Grantor and/or Consenting Party to complete the same.

**2. COMMENCEMENT OF TERM.** The term of this Easement (the “**Term**”) shall commence (the “**Commencement Date**”) upon the Effective Date and continue until the date that is sixty-one (61) calendar months following either (a) the Commencement Date if the Commencement Date is the first day of a calendar month, or (b) the first day of the first calendar month following the Commencement Date if the Commencement Date is not the first day of a calendar month.

**3. EXTENSION PERIODS. INTENTIONALLY OMITTED**

**4. EASEMENT PAYMENT.** Grantee shall pay to Grantor, as an easement payment, (“**Easement Payment**”), in advance, a one-time payment of Two-Hundred Six Thousand Two Hundred Sixty-Five Dollars (\$206,265.00) due on the Commencement Date.

All payments of Easement Payment and other sums due to Grantor hereunder shall be paid to the order of Grantor or to such other person or entity or at such other place within the continental United States as shall be designated by Grantor, in writing, delivered to Grantee at least ten (10) days prior to the next ensuing Easement Payment payment date. As used in this Easement, the term “**Additional Payment**” shall mean any and all sums (other than Easement Payment) payable by Grantee under this Easement to Grantor and to any third party.

**5. GRANTOR’S TITLE.**

(a) Grantee acknowledges that Grantor owns the Easement Area and currently leases such Easement Area to the Consenting Party subject to all liens, security interest, restrictions, leases and encumbrances of record or otherwise made known to Grantee, including without limitation, those that would have been disclosed in a title search. Grantor covenants and agrees that so long as Grantee is not in default hereunder, Grantee shall have quiet and peaceful possession and enjoyment of the Easement Area.

(b) This Easement shall be subject and subordinate to any mortgage covering the Easement Area and any and all renewals, modifications, consolidations, replacements and extensions thereof.

**6. RIGHT TO BUILD.** Upon receipt of the Easement Payment, Grantor shall decommission the existing HVAC system currently located on the Easement Area and replace it with an HVAC system to be located on the tract of land being part of 29-11-14-000-010.001-022 being retained by Grantor. Upon installation of the new HVAC system, Grantor shall inform Grantee that the HVAC System is installed and Grantee shall remove the existing HVAC system geothermal field to allow for the construction of a water storage tank on the Easement Area. Subject to the provisions of this Easement and applicable law, once the HVAC system has been decommissioned, Grantee may erect on the Easement Area a water tower and related buildings or facilities, or any other improvements as may be approved by Grantor. During the Term of this Easement, title to all such improvements shall remain in Grantee alone and Grantee shall be entitled to claim all depreciation to any improvements constructed on the Easement Area by Grantee. Grantee shall be obligated to make any necessary repairs or replacements to any building, equipment or fixtures at the Easement Area at the expiration or termination of the Ground Easement so as to cause such building, equipment and fixtures to comply with applicable laws and in conformity with Grantee’s maintenance obligations under this Easement. Grantee covenants and agrees to save, indemnify, defend, and hold Grantor harmless from and against any and all claims, losses, damages, liability, and expenses, including, but not limited to, court costs and attorney’s fees and all claims by contractors, subcontractors and their employees, and furnishers of labor and materials, arising out of or in connection with Grantee’s activities hereunder. Grantee further covenants and agrees to save, indemnify, defend, and hold Grantor harmless from and against any and all claims, losses, damages, liability, and expenses, including, but not limited to, court costs and attorney’s fees and all claims arising out of the use of the Easement Area or the structures placed thereon.

**7. MAINTENANCE OF THE EASEMENT AREA.** During the Term of this Easement, Grantee shall maintain, at Grantee’s sole expense, the Easement Area and any improvements thereon in good condition and repair and in compliance with all applicable laws, codes and regulations. In connection with the foregoing, Grantee shall bear the cost of utility expenses; the cost of snow, trash, rubbish, garbage, and other refuse and debris removal; the cost of licenses, permits, and other governmental fees and charges; the

cost of all maintenance and service contracts; signage costs; the cost of gardening and landscaping services and supplies; subsidies, surcharges, and other payments, which the Easement Area is required to pay to or by public or quasi-governmental bodies; and the cost of complying with all laws, rules, regulations, and ordinances.

8. **LIENS.** Grantee shall promptly remove and discharge, at its cost and expense, all mechanic's liens, or other liens, for labor performed or materials furnished with respect to the Easement Area by or for Grantee.

9. **UTILITIES.** Grantee shall provide to the Easement Area throughout the Term such sanitary and storm sewer facilities and such utilities (including, without limitation, water, electric power and gas) as Grantee may require. Grantee agrees to pay for all such utilities furnished to the Easement Area and which are consumed by Grantee, during the Term. Grantee shall pay for all utility hook-up, capital recovery and other fees or connection charges for utility service. All utilities shall be separately metered.

10. **ESTOPPEL CERTIFICATES.** Grantor and Grantee shall, from time to time upon ten (10) days' request by the other, execute, acknowledge and deliver a statement, dated currently, certifying that this Easement Agreement is unmodified and in full, force and effect (or, if there have been modifications, that this Sub-lease is in full effect as modified, and identifying such modifications) and the dates to which the Easement Payment and Additional Easement Payment have been paid, and that no default exists in the observance of this Easement and no event of default has occurred and is continuing, or specifying each such default or event of default of which Grantor or Grantee may have knowledge, it being intended that any such statement may be relied upon by Grantor's mortgagees, any prospective purchaser of the interest of Grantor or Grantee in their respective premises described herein or any assignee or lessee of Grantee.

11. **INSURANCE.**

(a) Throughout the Term, Grantee shall maintain commercial general liability insurance for injury to person (including death) or damage to property occurring within the building arising out of the use and occupancy thereof by Grantee, its licensees, employees, invitees, agents and customers. Such insurance shall be with minimum single limits of Two Million Dollars (\$2,000,000.00) for personal injury, death or property damage, and Grantor shall be named as additional insured under the policy. Said insurance may be in a form reasonably acceptable to Grantor, and Grantor shall be named an additional insured in said policy. After the Commencement Date and upon written request of Grantor, Grantee shall deliver to Grantor a certificate of such insurance naming Grantor as an additional insured and an agreement by the insurer that said policy may not be canceled without ten (10) days prior written notice delivered to Grantor.

(b) From and after the Commencement Date, Grantee shall procure casualty insurance with extended coverage endorsement upon Grantee's building in an amount equal to the replacement value of the building above the foundation walls.

12. **WAIVER OF SUBROGATION AND HOLD HARMLESS.** Grantor and Grantee shall obtain from their respective insurers endorsements whereby the insurers agree to waive any right of subrogation against Grantor or Grantee, as the case may be, in connection with fire or other risks or casualties covered by said insurance. Grantor agrees that it shall make no claim nor authorize any claim to be made against

Grantee, its employees, servants or agents in connection with or as a result of fire, explosion or any other casualty damaging the improvements on the Easement Area. Grantee agrees that it shall make no claim nor authorize any claim to be made against Grantor, its employees, servants or agents in connection with or as a result of fire, explosion, or other casualty damaging the contents or fixtures installed in the building on the Easement Area.

**13. EMINENT DOMAIN.**

(a) If all or substantially of the Easement Area or any building located thereon, shall be taken or appropriated under any right of eminent domain or under any other legal right whereby the taking authority is obligated to compensate Grantor therefor, then Grantee may terminate and cancel this Easement without owing any liability to Grantor as of the date on which the condemning authority takes physical possession upon giving to Grantor written notice of such election.

(b) If this Easement shall be terminated and canceled as a result of any taking or appropriation, Grantee shall be released from any further liability and Easement Payment and other sums for the last month of Grantee's occupancy shall be prorated.

(c) Grantor shall receive any award related to any such appropriation or taking related to the Easement Area or any building located thereon, provided however that may seek an award for damages for the termination of this Easement caused by such appropriation or taking, together with damages based on the value of Grantee's improvements and Grantee's fixtures and other personal property erected or installed on the Easement Area and damages Grantee may sustain to the interest in the business operated by Grantee on the Easement Area, including, but not limited to, goodwill, patronage, and the removal, relocation, and replacement costs and expenses caused by such appropriation or taking.

(d) If this Easement is not terminated and canceled because of any taking or appropriation, Grantee shall within thirty (30) days begin to restore the improvements to the Easement Area to a condition as nearly comparable as practicable to the condition existing just before such taking or appropriation using funds paid to Grantor by the condemning authority. In no event shall Grantor be required to provide Grantee with any funds over and above what has been paid to Grantor by the condemning authority.

**14. BROKERAGE AND FEES.** Grantor and Grantee represent and warrant that neither has engaged the services of any brokers and that each will pay their own legal fees, broker fees, costs, expenses, appraisal fees, or any other costs incurred in entering into this Easement.

**15. USE OF PREMISES BEFORE TERM COMMENCES.** Grantee may enter the Easement Area at any time prior to the Commencement Date and make improvements permitted by this Easement and install therein fixtures and equipment and receive and store therein other property at Grantee's own risk, free from Easement Payment, provided that such entry does not interfere unreasonably with any work being done by Grantor.

**16. TRANSFER OF TITLE.** If there shall be any change in or transfer of title in or to the Easement Area or any part thereof, Grantee shall continue to make all payments to Grantor, without owing any liability to any other party whatsoever, unless notified in writing by Grantor of such change in title which

shall accompany satisfactory proof and given at least ten (10) days before the next such payment is due. Thereafter, Grantee shall submit such payment to the party properly entitled to receive it, without owing any liability to any other party.

**17. GRANTEE'S DEFAULT.**

(a) If Grantee shall default in payment of Easement Payment, when due, Grantor shall forward written notice of such default to Grantee, provided, however, that no written notice shall be required if Grantor has previously given two (2) written notices of failure to pay any such amount during the immediately preceding twelve-month period, and the failure of Grantee to cure such default within ten (10) days after the date of receipt of such notice shall, at the option of Grantor, cause the termination of this Easement.

(b) If Grantee shall default in the performance of any other terms or provisions of this Easement, and if Grantor shall give to Grantee written notice, pursuant to Section 19, of such default, and if Grantee shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such a character as to require more than thirty (30) days to cure, then, if Grantee shall fail to use reasonable diligence in curing such default, Grantor may cure such default for the account of and at the cost and expense of Grantee, and the reasonable sums so expended by Grantor shall be deemed to be Additional Easement Payment and on demand shall be paid by Grantee on the day when Easement Payment shall next become due and payable or Grantor may exercise any remedy available at law or in equity.

(c) If any installment of Easement Payment or any other payment by Grantee under this Easement shall not be paid within five (5) days of when due, a "Late Charge" of five percent (5%) of the amount overdue may be charged by Grantor to defray Grantor's administrative expense incident to the handling of such overdue payments. Each Late Charge shall be payable by Grantee on demand of Grantor.

**18. HAZARDOUS SUBSTANCES.**

(a) As used herein, the term "**Hazardous Substances**" shall mean, without limitation, any substance that is biologically or chemically active or any hazardous, toxic, or dangerous waste, substance (including, but not limited to, lead-based paint, asbestos or petroleum derivative substances), or material defined as such in (or for purposes of) (i) any state, federal or local environmental laws, interpretive letters, regulations, decrees or ordinances, (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (iii) the Resource Conservation and Recovery Act, (iv) any of the so-called state or local "Super Fund", "Super Lien" or "Cleanup Lien" laws or (v) any other federal, state or local statute, law, ordinance, code, rule, interpretive letter, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any such substances or materials or any amendments or successor statutes with respect to any of the foregoing.

(b) During the Term of this Easement, Grantee represents and warrants that no Hazardous Substances will be stored on the Easement Area and no Hazardous Substances will be discharged on the Easement Area by Grantee. Grantee agrees that such representations and warranties shall survive any termination of this Easement, and Grantee agrees to indemnify and hold harmless Grantor from any and all costs, expenses, claims and damages, including, but not limited to, attorneys' fees and costs of remediation,

arising from Grantee's breach of any of the representations and warranties contained in this Section 18. Grantee shall indemnify, defend and hold Grantor harmless from and against any and all costs, expenses, and damages, including, but not limited to, attorneys' fees and costs of remediation arising out of any claim for loss or damage to property, injuries to or death of persons, any contamination of or adverse effects on the environment or any violation of any environmental or other law caused by or resulting from any hazardous waste, Hazardous Substance or any leakage or contamination from underground tanks on or under the Easement Area resulting from Grantee's operations or Grantee's customers, invitees, employees or agent in the Easement Area. This indemnification precedes, is concurrent with, and survives this Easement.

(c) Grantor shall indemnify, defend and hold Grantee harmless from and against any and all costs, expenses, and damages, including, but not limited to, attorneys' fees and costs of remediation arising out of any claim for loss or damage to property, injuries to or death of persons, any contamination of or adverse effects on the environment or any violation of any environmental or other law caused by or resulting from any hazardous waste, Hazardous Substance or any leakage or contamination from underground tanks on or under the Easement Area and not resulting from Grantee's operations or Grantee's customers, invitees, employees or agent in the Easement Area. This indemnification precedes, is concurrent with, and survives this Easement.

(d) Furthermore, Grantor represents and warrants to Grantee that Grantor has no actual knowledge of: (1) the presence of any Hazardous Substances on, under or within the Easement Area; (2) any spills, releases, discharges or disposals of Hazardous Substances that have occurred or are presently occurring on or onto the Easement Area (3) any spills or disposal of Hazardous Substances that have occurred or are occurring adjacent to the Easement Area as a result of any construction on or operation and use of the Easement Area or adjacent property; (4) any failure to comply with all applicable local, state and federal environmental laws, regulations, ordinances, and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances on the Easement Area, or adjacent property; or (5) the presence of any underground storage tanks, monitoring wells, water wells or septic tanks now or in the past on the Easement Area.

**19. NOTICE.** All notices or demands required or permitted to be given or served pursuant to this Easement shall be deemed to have been given or served only if in writing, postage pre paid and shall be sent by U.S. Certified Mail, Return Receipt Requested or via overnight (or 2d day) delivery service requiring a signature upon delivery (such as Fed Ex) to:

GRANTEE:

INDIANA-AMERICAN WATER  
COMPANY, INC.  
Attn: VP of Operations  
153 N Emerson Ave  
Greenwood, IN 46143

With Copy to

Indiana-American Water Company, Inc.  
Attn: Legal Department



153 N Emerson Ave  
Greenwood, IN 46143

GRANTOR:

NOBLESVILLE FIRE DEPARTMENT  
Attn. Fire Chief  
135 S. 9<sup>th</sup> Street  
Noblesville, IN 46060

With Copy to

City of Noblesville  
Attn: Legal Department  
16 S. 10<sup>th</sup> Street Noblesville, IN 46060

Such addresses may be changed from time to time by either party by serving notice as above provided.

**20. REAL ESTATE TAXES.**

(a) All real estate and personal property taxes assessed by applicable governmental authorities and assessed solely against the Easement Area which accrue during the Term shall be paid by Grantee prior to delinquency. Any assessments which are payable in installments may be paid in installments or in a lump sum at Grantee's option. Notwithstanding the foregoing, if any assessments are made in order to furnish any improvement, maintenance, repair or replacement that is Grantor's obligation under this Easement, then Grantor, and not Grantee, shall pay the same. Notwithstanding anything contained herein to the contrary, all taxes for any partial tax years within the Term shall be prorated between the parties so that Grantee shall be obligated to pay only that portion for the period accruing after the Commencement Date and prior to any termination or expiration of this Easement, and Grantee shall have no obligation with respect to taxes occurring or accruing prior to the Commencement Date or after the expiration or termination of this Easement.

(b) If the Easement Area are assessed as part of a larger parcel, Grantor shall pay all taxes on the larger tax parcel prior to delinquency, and Grantee shall reimburse Grantor for Grantee's equitable share of such taxes within thirty (30) days of receipt of billing therefor together with copies of the paid tax receipts and a copy of the tax map showing the tax parcel in which the Easement Area is included. Grantee's said equitable share shall include all taxes due based upon the assessed value of the improvements to the Easement Area, and an equitable percentage of the taxes due based on the value of the land included in the larger parcel, which Grantee's said equitable percentage of land value being determined by dividing the area of the Easement Area by the area of the larger parcel. Grantor and Grantee shall cooperate in reasonable attempts to have the Easement Area assessed as a separate tax parcel, at Grantor's sole cost and expense.

(c) Nothing contained herein shall require Grantee to pay any corporation, franchise, gross receipt, income, estate, gift and inheritance taxes or charges imposed on Easement Payment or other similar

taxes, charges or impositions which may be levied or assessed against Grantor, any fee owner or their respective successors in title.

(d) So long as Grantee has provided Grantor with a bond reasonably satisfactory to Grantor or Grantee does not allow any sort of lien to be created against the Easement Area, Grantee shall have the right, at its sole cost, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of real estate taxes assessed or levied upon the Easement Area and the building and improvements located thereon. If required by law, Grantee may take such action in the name of Grantor who shall fully cooperate with Grantee to the extent reasonably required by Grantee.

(e) Grantor shall not seek or join in any request for a special assessment or an assessment, benefit or improvement district resulting in a special assessment or an assessment or benefit district affecting Grantee or the Easement Area without either (a) the prior written consent of Grantee or (b) Grantor's written agreement (in form satisfactory to Grantee) that Grantor, and not Grantee, shall be responsible for payment of such special assessments or other assessments applicable to Grantee or the Easement Area. Without in any way diminishing the prohibition above, if Grantor, unless otherwise required by law, directly or indirectly causes Grantee and/or the Easement Area to become, or consents to the Easement Area becoming, a part of any assessment or benefit district, Grantor shall, unless Grantee consents to such district in Grantee's discretion, reimburse Grantee for any and all taxes and special assessments levied or assessed against Grantee and/or the Easement Area by reason thereof within thirty (30) days after Grantee's demand therefor.

**21. USE.** Grantee may use the Easement Area for any lawful purpose that does not interfere with the Grantor or Consenting Party's rights. .

Grantee may operate its business on the Easement Area, subject to the terms of this Easement, as Grantee deems best, and there shall be no restrictions upon Grantee or upon the operation of its business. Grantee may discontinue the operation of its business at any time or from time to time during the Term but shall remain liable for the performance of the terms and conditions of this Easement.

**22. GENERAL PROVISIONS.**

(a) Upon request of Grantee, Grantor shall promptly furnish to Grantee Grantor's tax identification number(s) so that Grantee may report the payments made by Grantee to Grantor under this Easement as required by applicable governmental authorities.

(b) This Easement (and the documents referred to herein) constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes any and all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein.

(c) This Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, legatees, distributees, legal representatives, successors and assigns.

(d) This Easement shall not be modified, amended or supplemented, in whole or part, without the prior written consent of all parties hereto. Each and every waiver of any covenant, representation, warranty or any other provision hereof must be in writing and signed by each party whose interests are adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

(e) If any legal action or other proceeding is brought for the enforcement hereof, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions hereof, the successful or prevailing party or parties shall be entitled to recover attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

(f) The parties hereby agree that each party and its attorneys have reviewed and revised this Easement and that the normal rule of construction, to the effect that any ambiguities are resolved against the drafting party, shall not be employed in the interpretation of this Easement and no other rule of strict construction shall be used against any party. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated herein by reference, as fully as if copied herein verbatim.

(g) This Easement shall be governed by the internal laws of the State of Indiana without regard to and excluding its principles of conflicts of laws.

(h) The parties further agree that upon request, they shall do such further acts and deeds, and shall execute, acknowledge, deliver and record such other documents and instruments, as may be reasonably necessary from time to time to evidence, confirm or carry out the intent and purposes of this Easement.

(i) Unless the context in which used clearly requires another construction, throughout this Easement, the masculine gender shall be deemed to include the neuter or feminine or both, the neuter gender shall include the masculine or both, and the singular of terms shall include the plural and vice versa. The section headings are for convenience only and shall not affect the construction hereof.

(j) If any one or more of the provisions hereof shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision hereof, which shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties intend that if any provision hereof is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(k) Time is of the essence with respect to the terms and conditions of this Easement and in the performance of each parties' respective obligations.

(l) This Easement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same instrument, and it shall not be necessary that any single counterpart bear the signatures of all parties.

(m) Unless expressly stated to be exclusive, no remedy conferred herein shall be deemed to be exclusive of any other remedy conferred herein or any other remedy now or hereafter available at law or equity. All remedies conferred herein, and all remedies now or hereafter available at law or equity, shall be deemed to be cumulative and not alternative, and may be enforced concurrently or successively.

(n) All provisions of this Easement shall be construed as covenants and agreements where used in each separate provision hereof and shall bind and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

(o) If more than one person or entity is named as Grantor in this Easement and executed the same as Grantor, then the word "Grantor" whenever used herein shall refer to all such persons or entities, and the liability of such persons or entities for compliance with or for the performance of all terms, conditions, covenants and provisions hereof shall be joint and several.

(p) All periods of time shall include Saturdays, Sundays and legal holidays; provided that, if the last day to perform any act or give notice falls on a Saturday, Sunday or legal holiday, then such act or notice shall be timely performed if given on the next succeeding business day.

(q) Any holding over by Grantee of the Easement Area after the expiration or termination of this Easement shall operate and be construed as a tenancy from month to month on all terms of this Easement, terminable by either party upon thirty (30) days prior written notice to the other.

(r) Nothing contained in this Easement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Grantor and Grantee, and no provision contained in this Easement nor any acts of the parties hereto shall be deemed to create any relationship between Grantor and Grantee other than the relationship of grantor and grantee.

(s) The words "hereof", "herein", "hereunder", and other words of similar import refer to this Easement as a whole and not to any specific article, section or subsection hereof. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated by reference into this Easement, as fully as if copied herein verbatim. The word "party" or "parties" means only those persons or entities who are signatories to this Easement. The terms "include," "includes," "including," or words of like import, shall be construed as being without limitation to the matters or items thereafter specified, notwithstanding any rule of construction to the contrary, unless an intention to be so limited is clearly expressed. Unless expressly otherwise provided herein, the terms "and" and "or" as used in this Easement means one or other or both, or any one or ones or all, of the items, entities or persons in connection with which the words are used.

(t) THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, ARISING FROM OR RELATING TO THE SUBJECT MATTER HEREOF. THE PARTIES HERETO WAIVE ANY RIGHT TO ANY PUNITIVE DAMAGES, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO SUCH DAMAGES.

**23. GRANTOR'S REPRESENTATIONS.** Grantor hereby covenants, warrants and represents to Grantee that:

(a) Grantor has the right, legal power and authority to enter into this Easement.

(b) All requisite individual, corporate, limited liability company or partnership actions or any other required action have been taken and satisfied by Grantor to authorize the execution and performance of this Easement. No other proceedings or actions on the part of Grantor are necessary to authorize this Easement or to carry out the transactions contemplated hereby. This Easement constitutes the legal, valid and binding obligation of Grantor enforceable against Grantor in accordance with its terms.

(c) The individual(s) executing this Easement, on behalf of Grantor, has (or have) the full right, legal power and actual authority to bind Grantor to the terms and conditions hereof.

(d) Neither the execution nor the provisions of this Easement violates or breaches or shall violate or breach any term or provision of any agreement, written or oral, between Grantor and any third party, and that if legal proceedings are instituted by any party to prohibit the use, operation or enjoyment of the Easement Area, or any part thereof, as provided in this Easement, Grantor shall assume the defense of any such legal proceedings and shall indemnify Grantee from and against any and all claims arising from or out of any such legal proceedings and/or the total or partial loss of the use, operation or enjoyment of the Easement Area, or any part thereof, as provided in this Easement.

(e) Grantor is a corporation duly organized and validly existing under the laws of the state of its formation and is duly qualified under the laws of the jurisdiction where the Easement Area is located.

**24. GRANTEE'S REPRESENTATIONS.** Grantee hereby covenants, warrants and represents to Grantor that:

(a) Grantee has the sole right, legal power and authority to enter into this Easement.

(b) All requisite individual, corporate, limited liability company or partnership actions or any other required action have been taken and satisfied by Grantee to authorize the execution and performance of this Easement. No other proceedings or actions on the part of Grantee are necessary to authorize this Easement or to carry out the transactions contemplated hereby. This Easement constitutes the legal, valid and binding obligation of Grantee enforceable against Grantee in accordance with its terms.

(c) The individual(s) executing this Easement, on behalf of Grantee, has (or have) the full right, legal power and actual authority to bind Grantee to the terms and conditions hereof.

(d) Neither the execution nor the provisions of this Easement violates or breaches or shall violate or breach any term or provision of any agreement, written or oral, between Grantee and any third party, and that if legal proceedings are instituted by any party to prohibit the enforcement of this Easement, Grantee shall assume the defense of any such legal proceedings and shall indemnify Grantor from and against any and all claims arising from or out of any such legal proceedings.

(e) Grantee is a corporation duly organized and validly existing under the laws of the state of its formation and is duly qualified under the laws of the jurisdiction where the Easement Area is located.

**25. RIGHT TO PURCHASE.** Grantee shall be obligated to purchase the Easement Area as set forth below. If at any time during the Term, Grantor shall receive a bona fide offer from a third party for the purchase of the Easement Area, which offer Grantor shall desire to accept, Grantor shall promptly deliver to Grantee a copy of the offer, and Grantee may, within twenty (20) days thereafter, elect to purchase the Easement Area on the same terms and conditions as set forth in the offer.

If Grantor shall sell the Easement Area after a failure of Grantee to exercise its rights of first refusal, such sale shall be subject to this Easement, and the right of first refusal shall continue and shall be applicable to subsequent sales of the Easement Area.

**26. PURCHASE AND SALE TRANSACTION.** Grantor shall sell to Grantee, and Grantee shall purchase from Grantor (the "**Purchase Transaction**"), the Easement Area upon the following terms and conditions:

(a) On or before the date that is three (3) calendar months prior to the expiration of the Term, Grantee shall provide Grantor with written notice (the "**Purchase Notice**") as to its preferred date for Closing (as defined below), provided, however that the actual date of Closing shall be subject to the reasonable approval of Grantor and the terms and conditions below. Such Purchase Notice shall specify the date of the applicable Closing Deadline that Grantee has chosen. Contemporaneous with providing such Purchase Notice, Grantee shall tender to Grantor a deposit (the "**Purchase Deposit**") in an amount equal to one-half of the Purchase Price (as defined below), which Purchase Deposit shall not be refundable to Grantee unless a default by Grantor occurs with respect to its Closing obligations, or there is a failure of a closing condition specified herein. The deposit shall be credited to the Purchase Price (as defined below) at Closing.

(b) Closing (as defined below) on the sale and purchase of the Easement Area shall occur within the thirty (30) day period immediately preceding and including the last day of the Term.

(c) The purchase price (the "**Purchase Price**") for the Easement Area shall be One Hundred Forty Thousand Dollars (\$140,000.00) which amount is the current appraised value for the Easement Area per appraisals on file with the city.

(d) Grantee acknowledges and agrees that the intent hereof is that Grantor and Grantee are obligated to proceed with Closing of the Purchase Transaction and that such Closing is not optional for either party. If Grantee fails to timely provide the Purchase Notice or the Purchase Deposit or otherwise fails to close on the Purchase Transaction for any reason other than by reason of a default by Grantor with respect to its Closing obligations, Grantee shall immediately be deemed in default hereunder and Grantor shall be permitted to thereupon terminate this Easement and Grantee shall be obligated to immediately pay Grantor liquidated damages in an amount equal to the Purchase Deposit together with all costs incurred by Grantor in connection with the Purchase Transaction, including reasonable attorney fees and costs of collection.

(e) The parties shall close the purchase and sale of the Easement Area through an escrow closing (the “**Closing**”) with a nationally recognized title insurance company that Grantee selects and is reasonably acceptable to Grantor (the “**Title Company**”). At the Closing Grantor shall convey the Easement Area to Grantee by quitclaim deed, subject to (i) real property taxes and assessments which are not delinquent, (ii) public rights of way, (iii) any matters that would be disclosed by an accurate survey or inspection of the Easement Area, (iv) the rights of Grantee under this Easement, and (v) all encumbrances, restrictions, and other matters of record, provided, however that Grantor shall cause any mortgage or other lien or financing documents encumbering the Easement Area granted by Grantor to be paid off and released at Closing.

(f) At the Closing, Grantor shall deliver or cause to be delivered to Grantee, the deed in the form described above and any other documents reasonably requested by Grantee or the Title Company to be delivered by Grantor or necessary to implement and effectuate the Closing hereunder, including, without limitation, a settlement or Closing statement prepared by the Title Company and any other forms customary for real similar estate transactions with within the State where the Easement Area is located. All such documents shall be duly executed and, as applicable, acknowledged in recordable form.

(g) At Closing, Grantee shall deliver or cause to be delivered to Grantor the balance of the Purchase Price to Grantor by federal wire transfer, and any other documents reasonably requested by Grantor or the Title Company to be delivered by Grantee or necessary to implement and effectuate the Closing hereunder, including, without limitation, a settlement or Closing statement prepared by the Title Company and any other forms customary for real similar estate transactions with within the State where the Easement Area is located. All such documents shall be duly executed and, as applicable, acknowledged in recordable form.

(h) Unless otherwise agreed to by the parties, there shall be no proration at Closing of the Purchase Price, real estate taxes and assessments, or any other costs. Grantor shall deliver possession of the Easement Area at Closing in such condition as exists as of the Closing, IT BEING UNDERSTOOD THAT Grantee would be acquiring the Easement Area in its then “AS-IS” condition and without any representations or warranties whatsoever. Grantee shall be responsible for all title insurance premiums, search fees, costs for title endorsements, survey costs, recording fees, real estate taxes due and payable after the date of closing, any applicable closing and escrow fees charged by the escrow and closing agent, and its closing costs and attorney's fees. Grantor will be responsible for its attorneys’ fees and other closing costs incurred by Grantor in connection with the Closing.

(i) Time is of the essence of the terms and provisions of this Section 26.

(j) In addition to the Purchase Price, at or before closing, Grantee shall cause the following work to be completed to the satisfaction of Grantor prior to any obligation of the Grantor or the Consenting Party to deliver title to the Easement Area to the Grantee at Grantee’s sole cost and expense the following:

(i) Relocation of the Grantor/Consenting Party’s diesel tank as shown on the Site Plan that is attached as Exhibit B from the Easement Area to a location approved by the Grantor and/or Consenting Party, such relocation shall be completed within six (6) months after Grantor informs Grantee that the HVAC conversion is complete;

(ii) Installation of a fire hydrant as shown on the Site Plan that is attached as Exhibit B;

(iii) Replacement of all trees removed during construction or otherwise by the Grantee that are on the Southside of the Easement Area;

(iv) Granting to the Grantor an easement for access to and around the Consenting Party's training facility in a form and manner acceptable to the Grantee and/or Consenting Party which consent shall not be unreasonably withheld;

(v) A maintenance agreement acceptable to both parties for the maintenance of the access easement area so that replacements are jointly shared by the parties;

(k) At or prior to Closing, the parties shall also enter into a new easement for the access area and the drainage areas and record the same.



**SIGNATURE PAGE TO EASEMENT AGREEMENT.**

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the day and year first above written.

<b>GRANTEE:</b>		INDIANA AMERICAN WATER CORPORATION By: <u>Kari Britto</u> Printed: <u>Kari Britto</u> Its: <u>Vice President</u>
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STATE OF Indiana )  
COUNTY OF Johnson ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Kari Britto, by me known and by me known to be the Vice President of Indiana American Water Corporation, an Indiana corporation, who acknowledged the execution of the foregoing Easement with Option to Purchase on behalf of such corporation.

WITNESS my hand and Notarial Seal this 7<sup>th</sup> day of February, 2024.

My commission expires:

February 27, 2031

My county of residence:

Marion

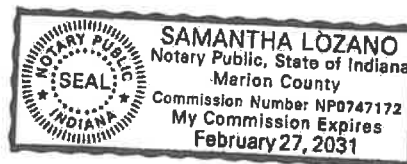
My commission number:

NP 0747172

Samantha Lozano  
Notary Public Signature

Samantha Lozano

Printed Name



<b>GRANTOR:</b>		Noblesville Building Corporation, an Indiana Corporation  By: <u>William Taylor</u> William Taylor, President
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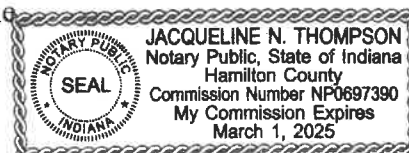
STATE OF Indiana )  
 ) SS:  
 COUNTY OF Hamilton )

Before me, a Notary Public in and for said County and State, personally appeared William Taylor, by me known and by me known to be the President of Noblesville Building Corporation, an Indiana corporation, who acknowledged the execution of the foregoing Easement with Option to Purchase on behalf of such corporation.

WITNESS my hand and Notarial Seal this 7<sup>th</sup> day of February, 2024.

My commission expires:  
March 1, 2025  
 My county of residence:  
Hamilton  
 My commission number:  
697390

Jacqueline N. Thompson  
 Notary Public Signature  
Jacqueline N. Thompson  
 Printed Name



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. Jonathan W. Hughes

**This instrument prepared by Jonathan W. Hughes, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204, (317) 684-5381.**



**EXHIBIT A**

**Easement Area**

# LEGAL DESCRIPTION

## **LAND DESCRIPTION (Easement Land Area)**

A part of the Northeast Quarter of Section 14, Township 18 North, Range 5 East, Hamilton County, Indiana, described as follows:

Commencing at the Northeast corner of said Northeast Quarter of Section 14; thence South 00 degrees 36 minutes 21 seconds East (bearings are derived from coordinates based on the Indiana Geospatial Coordinate System for Hamilton County, NAD 83 (2011), epoch 2010.0) 2,097.21 feet along the East line of said Northeast Quarter to the POINT OF BEGINNING of this description; thence South 00 degrees 36 minutes 21 seconds East 40.01 feet along said East line to the southeast corner of the 9.998-acre tract of land being recorded as Instrument Number 2008044874 in the Hamilton County Recorder's Office, the next two courses are along the southern and western boundary lines of said 9.998-acre tract; 1) thence North 89 degrees 19 minutes 21 seconds West 871.22 feet; 2) thence North 00 degrees 36 minutes 21 seconds West 350.00 feet parallel with said East line; thence South 89 degrees 19 minutes 21 seconds East 277.84 feet; thence South 00 degrees 40 minutes 39 seconds West 109.91 feet; thence South 89 degrees 19 minutes 21 seconds East 80.00 feet; thence South 00 degrees 40 minutes 39 seconds West 200.00 feet; thence South 89 degrees 19 minutes 21 seconds East 520.32 feet to the POINT OF BEGINNING, containing 3.119 acres, more or less.

## **DRAINAGE EASEMENT DESCRIPTION**

A part of the Northeast Quarter of Section 14, Township 18 North, Range 5 East, Hamilton County, Indiana, described as follows:

Commencing at the Northeast corner of said Northeast Quarter of Section 14; thence South 00 degrees 36 minutes 21 seconds East (bearings are derived from coordinates based on the Indiana Geospatial Coordinate System for Hamilton County, NAD 83 (2011), epoch 2010.0) 2,137.22 feet along the East line of said Northeast Quarter to the southeast corner of the 9.998-acre tract of land being recorded as Instrument Number 2008044874 in the Hamilton County Recorder's Office, the next four courses are along the southern, western and northern boundary lines of said 9.998-acre tract; 1) thence North 89 degrees 19 minutes 21 seconds West 871.22 feet; 2) thence North 00 degrees 36 minutes 21 seconds West 350.00 feet parallel with said East line to POINT OF BEGINNING; 3) thence North 00 degrees 36 minutes 21 seconds West 150.02 feet; 4) thence South 89 degrees 19 minutes 21 seconds East 371.20 feet; thence South 00 degrees 40 minutes 39 seconds West 174.98 feet; thence North 89 degrees 19 minutes 21 seconds West 90.00 feet; thence North 0 degrees 40 minutes 39 seconds East 25.00 feet; thence North 89 degrees 19 minutes 21 seconds West 277.84 feet to the POINT OF BEGINNING, containing 1.324 acres, more or less.

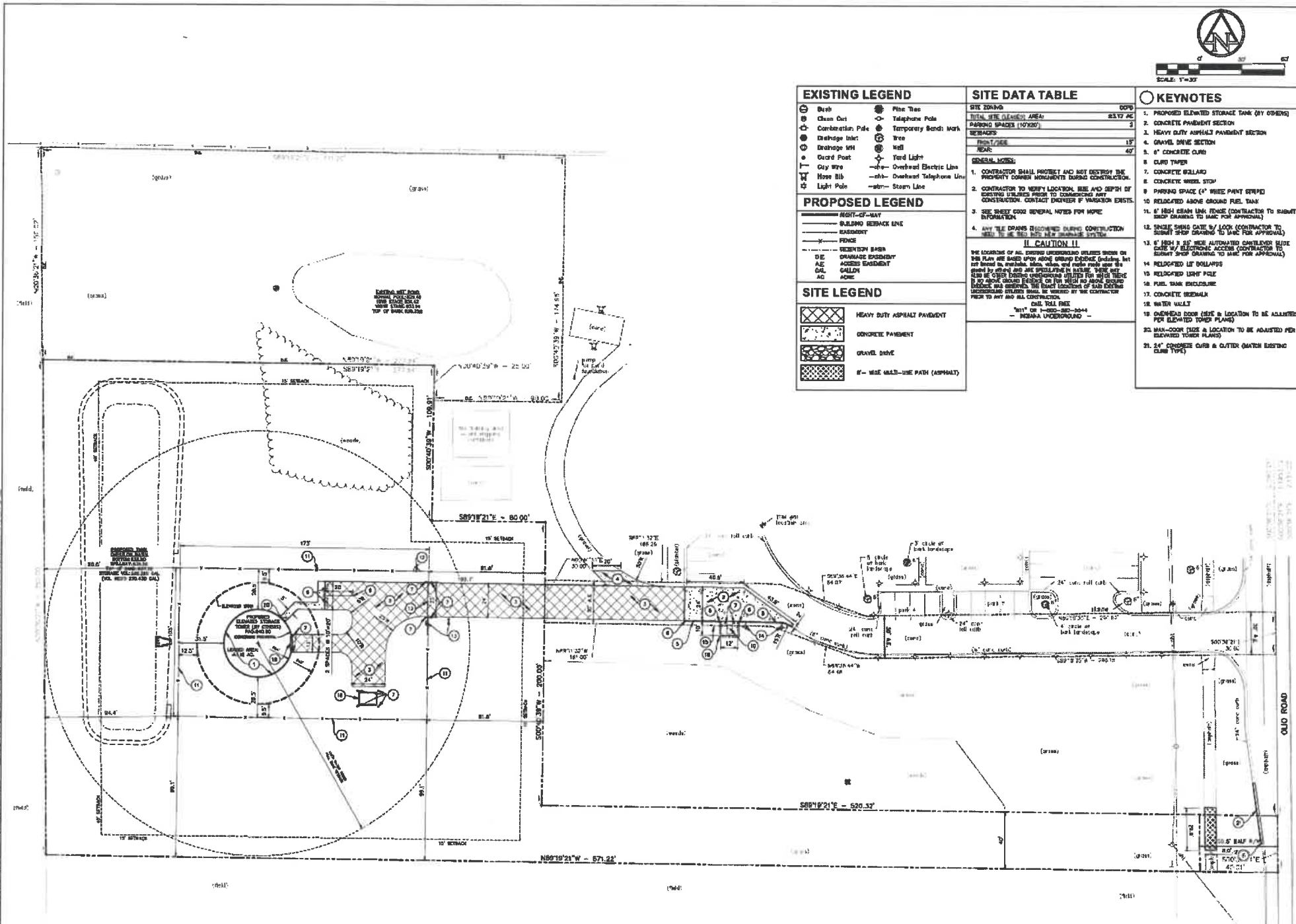
## **ACCESS EASEMENT DESCRIPTION**

A part of the Northeast Quarter of Section 14, Township 18 North, Range 5 East, Hamilton County, Indiana, described as follows:

Commencing at the Northeast corner of said Northeast Quarter of Section 14; thence South 00 degrees 36 minutes 21 seconds East (bearings are derived from coordinates based on the Indiana Geospatial Coordinate System for Hamilton County, NAD 83 (2011), epoch 2010.0) 1,953.12 feet along the East line of said Northeast Quarter to the POINT OF BEGINNING of this description; thence South 00 degrees 36 minutes 21 seconds East 30.00 feet along said East Line; thence South 89 degrees 18 minutes 35 seconds West 296.15 feet; thence North 69 degrees 36 minutes 44 seconds West 64.48 feet; thence North 89 degrees 11 minutes 32 seconds West 161.00 feet; thence North 00 degrees 40 minutes 39 seconds East 30.00 feet; thence South 89 degrees 11 minutes 32 seconds East 166.25 feet; thence South 69 degrees 36 minutes 44 seconds East 64.07 feet; thence North 89 degrees 18 minutes 35 seconds East 290.62 feet the POINT OF BEGINNING, containing 0.359 acres, more or less.

**EXHIBIT B**

**Site Plan**



**EXISTING LEGEND**

○ Bush	○ Pine Tree
○ Clean Out	○ Telephone Pole
○ Combination Pole	○ Temporary Sand Mark
○ Drainage Inlet	○ Tree
○ Drainage Inlet	○ Well
○ Guard Post	○ Yard Light
○ City Wire	○ Overhead Electric Line
○ Hose Bib	○ Overhead Telephone Line
○ Light Pole	○ Steam Line

**PROPOSED LEGEND**

—— RIGHT-OF-WAY
—— BUILDING SETBACK LINE
—— FENCE
—— SEWER MAIN
○ DIE
○ DRAINAGE BASIN
○ ADDRESS EASEMENT
○ A/C
○ GALLON
○ AC

**SITE LEGEND**

	HEAVY DUTY ASPHALT PAVEMENT
	CONCRETE PAVEMENT
	GRAVEL DRIVE
	8' - WIDE GRASS-USE PATH (ASPHALT)

**SITE DATA TABLE**

SITE ZONING	DDP
TOTAL SITE AREA (ACRES)	26.77 AC
PARKING SPACES (TOTAL)	3
FRONT/REAR	15'
NEAR	40'

**KEYNOTES**

- PROPOSED ELEVATED STORAGE TANK (BY OTHERS)
- CONCRETE PAVEMENT SECTION
- HEAVY DUTY ASPHALT PAVEMENT SECTION
- GRAVEL DRIVE SECTION
- 6" CONCRETE CURB
- CURB TAPER
- CONCRETE WALL
- CONCRETE WEDGE STOP
- PAVING SPACE (4" WHITE PAINT STRIP)
- RELOCATED ABOVE GROUND FUEL TANK
- 6" HIGH CHAIN LINK FENCE (CONTRACTOR TO SUBMIT SHOP DRAWINGS TO IAWC FOR APPROVAL)
- SINGLE SWING GATE w/ LOCK (CONTRACTOR TO SUBMIT SHOP DRAWINGS TO IAWC FOR APPROVAL)
- 6" HIGH x 2" DEE WIRE AUTOMATED CONTROLLER (ELECTRICIAN TO SUBMIT SHOP DRAWINGS TO IAWC FOR APPROVAL)
- RELOCATED 1/2" DOLLARS
- RELOCATED LIGHT POLE
- FUEL TANK ENCLOSURE
- CONCRETE SIDEWALK
- WATER WALL
- OVERHEAD DOOR (SIZE & LOCATION TO BE ADJUSTED PER ELEVATED TOWER PLANS)
- MAN-DOOR (SIZE & LOCATION TO BE ADJUSTED PER ELEVATED TOWER PLANS)
- 24" CONCRETE CURB & CUTTER (MATCH EXISTING CURB TYPE)

**II. CAUTION !!**

THE LOCATIONS OF ALL EXISTING UNDERGROUND UTILITIES SHOWN ON THIS PLAN ARE BASED UPON ABOVE GROUND EVIDENCE, INCLUDING, BUT NOT LIMITED TO, UTILITY MARKS, RECORDS AND FIELD SURVEY DATA. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION. CONTACT THE OWNER FOR MORE INFORMATION.

ANY TILE DRAINS DISCOVERED DURING CONSTRUCTION SHALL BE RELOCATED INTO NEW DRAINAGE SYSTEM.

CALL TOLL FREE 1-800-367-3044  
— INDIANA UNDERGROUND —

INDIANA  
AMERICAN WATER

**INDIANA AMERICAN WATER (IAWC)**  
153 N Emerson  
Avenue, Greenwood,  
IN 46143

**STRUCTUREPOINT**

826 River Road, Suite 200 | Noblesville, Indiana 46060  
TEL: 317.438.8100 | FAX: 317.438.2773  
www.structurepoint.com

**OLLO ROAD ELEVATED STORAGE TANK SITE PREPARATION**

15251 Ollo Road  
Noblesville, IN 46060

**SITE**

No. 11800754  
State of Indiana  
Professional Engineer

*[Signature]*  
CERTIFIED BY

<b>ISSUANCE INDEX</b>	
DATE:	07/12/2023
PROJECT PHASE:	CONSTRUCTION DOCUMENTS

<b>REVISION SCHEDULE</b>		
NO.	DESCRIPTION	DATE

Project Number 2022.02709

**SITE PLAN**