ORDINANCE NO. 3613

AN ORDINANCE TO VACATE A CERTAIN PORTION
OF NORTH 5TH STREET AND AN UNIMPROVED ALLEY
IN NEW CASTLE, HENRY COUNTY, INDIANA

WHEREAS, there is a portion of North 5th Street bounded on the south by the north right-of-way line of Broad Street and bounded on the north by the south right-of-way line of Spring Street, which bisects certain real estate to be purchased by Henry County REMC, and

WHEREAS, there is an unimproved alley located at 125 North 6th Street which runs north and south that measures 12 feet by 132 feet located between Lots 2 and 3 in Block 7 of Benjamin Elder's Second Addition to the Town now City of New Castle, and

WHEREAS, said North 5th Street and the unimproved alley referred to hereinabove are not needed by the City of New Castle as a public right-of-way, and

WHEREAS, said street and unimproved alley are not used for the purposes of ingress and egress, and

WHEREAS, the vacation of this street and alley will not hinder the growth or orderly development of the neighborhood in which they are located or in which they are contiguous. The vacation will not make access to the lands of any person by means of public way difficult or inconvenient, and the vacation will not hinder the public's access to a church, school or other public building or place, and the vacation will not hinder the use of a public right-of-way by the neighborhood in which it is located or to which it is contiguous, and

WHEREAS, the contiguous property owners have received notice pursuant to the provisions of the appropriate Indiana statutes regarding the petition and hearings thereon.

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NEW CASTLE that the portion of North 5th Street identified herein below be vacated. That further the unimproved alley identified herein below shall be vacated. The unimproved portion of North 5th Street and the unimproved alley are located in the corporate limits of the City of New Castle and more particularly described as follows to-wit:

> That portion of North 5th Street located between Broad Street and Spring Street in New Castle, Henry County, Indiana along with a platted but unimproved alley that measures 12 feet by 132 feet located between Lots 2 and 3, Block 7 in Benjamin Elder's Second Addition to the Town now City of New Castle, Indiana.

PUBLIC UTILITY EASEMENT RETAINED AND RESERVED: **The City of New Castle expressly reserves and retains an easement to maintain, install, improve and construct public utility facilities over and under the land hereby vacated. THIS VACATION IS SUBJECT TO A PERPETUAL EASEMENT FOR PUBLIC UTILITY PURPOSES RESERVED BY THE CITY OF NEW CASTLE, INDIANA. The City of New Castle shall have the unqualified right to construct, add-to, maintain, replace and rebuild current or future public utilities on the land described above and vacated for public ingress and egress purposes by this ordinance. The City of New Castle shall own a permanent easement for public utility purposes over and under the land described hereinabove and vacated by this ordinance. Future title holders shall not be entitled to any compensation from any public utility or the City of New Castle as a result of any use of this real estate for public utility purposes over or under the land hereby vacated and described above. Any use of the above described real estate for public utility purposes shall not be**

deemed a taking as that term is defined statutorily or by the common law.

Exhibits included: The attached Exhibits "A" and "B" are attached hereto, incorporated herein and made a part of this ordinance.

REPEALER: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SEVERABILITY: Any provision herein contained which is found by a court of competent jurisdiction to be unlawful or which by operation shall be inapplicable, shall be deemed omitted but the rest and remainder of this ordinance, to the extent feasible, shall remain in full force and effect.

Exhibit A