

**CITY/COUNTY UTILITY REIMBURSEMENT AGREEMENT**

Agreement Amount \_\_\_\_\_ Des No. \_\_\_\_\_

Agreement Type \_\_\_\_\_ Project No. \_\_\_\_\_

Work Description \_\_\_\_\_ Road \_\_\_\_\_

\_\_\_\_\_ County \_\_\_\_\_

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_, by and between \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(hereinafter referred to as the "Utility"), and \_\_\_\_\_

\_\_\_\_\_

Indiana acting by and through its appropriate elected official, (hereinafter referred to as the "Local Public Agency" or "LPA").

**WITNESSETH:**

**WHEREAS**, the LPA desires to improve and/or maintain the condition of the above referenced road and has determined that the construction designated by the above project number (hereinafter referred to as the "project") is necessary for the improvement and/or maintenance of the roadway;

**WHEREAS**, the State of Indiana, through the Indiana Department of Transportation, (hereinafter referred to as "INDOT") has agreed to recommend approval of this project to the Federal Highway Administration for construction with funds apportioned to the State under Title 23, United States Code and Acts amendatory thereof and supplementary thereto;

**WHEREAS**, INDOT will advertise for bids for construction of the project, award the contract, and act as liaison agent for the LPA with the Federal Highway Administration. The LPA will supervise the construction of the project.

**WHEREAS**, the project will require certain adjustments, removals, alterations and/or relocations of the existing facilities of the Utility as shown on the plan marked Exhibit "A", attached hereto and incorporated by reference;

**WHEREAS**, it is necessary for the parties hereto to comply with the applicable terms and provisions of the FHWA Program Guide: Utility Relocation and Accommodation on Federal Aid Highway Projects (hereinafter called the Program Guide), dated January 2003, and 23 CFR 645 Subpart A, incorporated by reference, in order to receive reimbursement for the costs of the adjustments, removals, alterations and/or relocations of the existing facilities of the Utility;

**WHEREAS**, it is in the best interests of the Utility and the LPA, for the necessary utility adjustments, removals, alterations and/or relocations of its existing facilities as shown on Exhibit "A" to be made by a contractor paid under the contract let by INDOT.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL AGREEMENTS AND COVENANT HEREIN CONTAINED (THE ADEQUACY OF WHICH CONSIDERATIONS AS TO EACH OF THE PARTIES TO THIS AGREEMENT IS HEREBY MUTUALLY ACKNOWLEDGED), AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND INTENDING TO BE LEGALLY BOUND, THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

#### SECTION 1 – PREPARATION OF RELOCATION PLANS

The Utility shall prepare, or cause to be prepared, all plans, specifications and a preliminary itemized cost estimate, for relocation of the Utility's facilities that need to be relocated in order to construct the LPA's project. The construction contract will require the contractor, which is awarded the contract, to list the Utility as an additional named insured. In addition, the construction contract will provide that the Utility is a third-party beneficiary with respect to the relocation work. No changes to the plans or specifications for relocation of the Utility's facilities shall be made without the written approval of the Utility. INDOT will prepare the final engineer's estimate for the construction contract.

#### SECTION 2 – AWARDING OF CONSTRUCTION CONTRACT

INDOT will advertise one (1) contract for bids which includes the plans and specifications for relocation of the Utility's facilities and the plans and specifications for the LPA's project. Upon receipt of an acceptable bid in accordance with State law, INDOT will award a contract for construction of the work. The Utility agrees to have the contractor to whom INDOT awards the contract relocate the Utility's facilities.

#### SECTION 3 – CONSTRUCTION TESTING AND INSPECTION

The LPA will provide, or cause to provide, construction inspection and testing services to monitor the contractor's relocation of the Utility's facilities. The Utility may inspect, at its own cost, the relocation of the Utility's facilities. The Utility shall timely advise the LPA, in writing, of any deficiencies that are observed. Prior to INDOT's final acceptance of the construction contract, the Utility shall make an inspection of the facility relocation work and advise the LPA in writing of the Utility's acceptance thereof. Such acceptance shall not be unreasonably withheld.

## SECTION 4 – SUBORDINATION OF RIGHTS

The existing facilities are located on public right-of-way. If such facilities are located on property, other than public right-of-way, and the Utility either has an easement thereon or a continuing right to maintain the facilities in that location, the Utility, for and in consideration of this agreement, shall subordinate the Utility's rights herein to those of the LPA in the roadway right-of-way by executing an individual subordination agreement.

## SECTION 5 – REIMBURSEMENT

- (a) \_\_\_\_\_% of the cost to design and prepare construction plans, specifications and preliminary itemized cost estimate for relocation of the Utility's facilities shall be borne by the LPA.
- (b) \_\_\_\_\_% of the cost to provide testing and inspection services for relocation of the Utility's facilities shall be borne by the LPA.
- (c) \_\_\_\_\_% of the cost of relocating the Utility's facilities shall be borne by the LPA, see exhibit "B", attached hereto and incorporated by reference.

The cost of relocation of the Utility's facilities, provided for in (c) shall equal the amount paid to the contractor based upon the actual units of work performed at the unit prices set out in the contractor's itemized proposal or in change orders.

The estimated cost of relocation is \$\_\_\_\_\_, see exhibit "B" for an itemized estimate of all anticipated costs, including but not limited to, materials, labor, and equipment costs.

The estimated cost of non-reimbursable relocation work to the utility's facilities is \$\_\_\_\_\_. The Utility has appropriated, duly made and entered of record, the amount of \$\_\_\_\_\_ to apply to the cost of the project. A copy of the Utility's official record wherein such appropriation was made is attached as Exhibit "C", attached hereto and incorporated by reference. If the appropriation is zero dollars, such shall be noted in the attached Exhibit "C".

## SECTION 6 – COMPLETION OF PROJECT

Upon final acceptance of the contractor's work (the construction contract), the Utility shall be responsible for maintenance, repair, and/or reconstruction of the Utility's facilities.

## SECTION 7 – WAIVER

The Utility waives any claim, demand, or expectation it may have in the future against INDOT and/or the LPA based upon any negligent omission and/or commission by the contractor performing the relocation of the Utility's facilities.

## SECTION 8 – PAYMENTS

Within forty-five (45) days after the contract is awarded, the Utility shall pay the LPA a sum equal to one hundred percent (100%) of the Utility's share of the bid price for construction as stated above in Section 5. If a Change Order is approved which increases the Utility's share of the project cost, the Utility shall pay the LPA within thirty (30) days a sum equal to one hundred percent (100%) of such increased cost. If the Utility's share is less than the amount the utility has contributed, then the LPA will refund the difference within thirty (30) days.

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8. Payment will be made by electronic funds transfer to the financial institution designated by the Utility in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this agreement except as permitted by IC 4-13-2-20

## SECTION 9 – BINDING UPON SUCCESSORS OR ASSIGNS

This Agreement shall be binding upon the parties and their successors and assigns.

## SECTION 10 – GENERAL LIABILITY PROVISIONS

The Utility for itself, its employees, agents and representatives, shall indemnify, protect and save harmless the Indiana Department of Transportation, the State of Indiana, and the LPA from and against any and all legal liabilities and other expenses, claims, cost, losses, suits or judgments for damages, or injuries to or death of persons or damage to or destruction of property (hereafter "Claim"), arising out of intentional tortious acts or whether due in whole or in part to the negligent acts or omissions of the Utility, its employees or agents or contractors, in relation to or in connection with any work performed or to be performed pursuant to this agreement, provided however, that where the State has been found liable by a court, tribunal or governing body entitled to make such a determination for intentional tortious acts and/or negligence with respect to the occurrence or occurrences giving rise to the Claim, the Utility shall have no duty to indemnify, protect, or save harmless either the Indiana Department of Transportation, the State, or the LPA.

## SECTION 11 – INCORPORATION OF THE UTILITY POLICY GUIDE

The Program Guide forms an essential part of this Agreement, and the terms or provisions of this Agreement in no way abrogate or supersede the terms or provisions set forth in said Program Guide.

## SECTION 24 – BUY AMERICA CERTIFICATION

The Utility agrees that all steel and cast iron materials and products to be used under this agreement will be produced and manufactured in the United States of America pursuant to the requirements of Ind. Code 5-16-8-1, et al. and 23 CFR 635.410

**IN WITNESS HEREOF** the parties hereto separately and severally have caused this instrument to be executed in their respective names by and through their duly authorized officers.

**THE UTILITY:**

**ATTEST:**

\_\_\_\_\_  
(Utility Name)

\_\_\_\_\_  
(Secretary of Utility-Signature)

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Secretary's Name, Printed or Typed)

\_\_\_\_\_  
(Officer's Name, Printed or Typed)

\_\_\_\_\_  
(Officer's Position)

**ACKNOWLEDGEMENT**

State of \_\_\_\_\_ County of \_\_\_\_\_ SS:

Before me, the undersigned Notary Public in and for said County and State, personally appeared \_\_\_\_\_  
(Names and offices of signers of Utility)

of \_\_\_\_\_ and  
(Name of Utility)

acknowledged the execution of the foregoing contract on this \_\_\_ day of \_\_\_\_\_ 20 \_\_\_.

Witness my hand and seal the said last day.

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Printed or Typed) (Notary Public)

**FOR:**

\_\_\_\_\_  
(Name of LPA)

**BY:**

\_\_\_\_\_  
\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Typed or Printed Name)

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_  
(Typed or Printed Name)

**ACKNOWLEDGEMENT**

State of Indiana, County of \_\_\_\_\_, SS:

Before me, the undersigned Notary Public in and for the County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing contract on this \_\_\_ day of \_\_\_\_\_ 20 \_\_\_.

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(seal)

\_\_\_\_\_  
(Printed or Typed) (Notary Public)

This document prepared by: \_\_\_\_\_