

October 8, 2013

**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").

**WITNESSETH:**

**WHEREAS**, the Local Public Agency 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 "State") 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**, the State will advertise for bids for construction of the project, award the contract, supervise the construction of the project and act as liaison agent for the Local Public Agency with the Federal Highway Administration;

**WHEREAS**, the project will require certain adjustments, removals, alterations and/or relocations of the existing facilities of the Utility will have to be made 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 Federal-Aid Policy Guide (hereinafter called the Policy Guide), dated December 9, 1991, 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 Local Public Agency, for the Utility to make the necessary adjustments, removals, alterations and/or relocations of its existing facilities as shown on Exhibit "A" with the Utility's regular construction and maintenance forces, or by a contractor paid under a contract let by the Utility.

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 I - DESCRIPTION OF WORK AND ITEMIZED COST ESTIMATE**

The Utility shall make the necessary adjustments, removals, alterations and/or relocations to its existing facilities in the following manner:

[Circle (1) and/or (2)]

(1) With its regular construction or maintenance crew and personnel at its standard schedule of wages and working hours.

(2) By an approved contractor as set forth in 23 CFR 645.109, 645.111 and/or 645.115.

The preliminary itemized cost estimate for this project is set forth in attached Exhibit "B", incorporated by reference, and prepared in accordance with 23 CFR 645.113.

Exhibit "B" shall include an itemized estimate of all anticipated costs, including but not limited to, materials, labor, equipment costs, preliminary and construction engineering costs, administrative costs, eligible property costs, and or contracted

services. Each item shall be shown as a 'per unit' cost. Professional services cannot be listed as a percentage of the total cost.

## **SECTION II - WORK COMMENCEMENT**

The Utility shall not start work on the adjustments, removals, alterations and/or relocations covered by this agreement until written authorization has been given the Utility by the Local Public Agency or until a satisfactory starting date has been established with the Local Public Agency's project coordinator.

## **SECTION III - SUBORDINATION OF RIGHTS**

The existing facilities (are) (are not) 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 to those of the Local Public Agency in the highway right-of-way prior to final payment by executing an individual subordination agreement.

## **SECTION IV - MATERIAL ALTERATIONS DUE TO CHANGED AND UNFORESEEN CIRCUMSTANCES**

The Utility shall modify its facilities in accordance with the plans, specifications, and estimates shown in Exhibits "A" and "B". No work shall be performed by the Utility beyond the scope contemplated by Exhibits "A" and "B" without prior written authorization by the Local Public Agency.

In the event there are changes in the scope of work, extra work, or major change in the planned work covered by the approved agreement, plans, and estimate the Utility shall inform the Local Public Agency as soon as practical upon discovery. The Utility shall also notify the Local Public Agency of any material alterations due to unforeseen circumstances as soon as practical upon discovery. Such notification shall consist of a letter, telephone call, or other electronic communication confirmed by letter to the address of the Local Public Agency listed on Page 1 of this agreement

Notification shall include sufficient information to indicate the nature of the changed or unforeseen circumstances, the location of the changed or unforeseen circumstances, and the impact of the changed or unforeseen circumstances upon the Utility's relocation efforts, cost of the relocation, the time necessary to complete the relocation, and the extent of relocation.

## **SECTION V - STANDARD PAYMENT METHOD / PROGRESS BILLING**

The Utility may, once the Utility has accumulated **\$1,000.00** of expenses, submit one request for payment per calendar month for work covered by this agreement. The utility shall attach an itemization of costs incurred with each request for payment. This

itemization of costs shall appear in the same form and manner as the preliminary estimate as shown on Exhibit "B"

The Local Public Agency will reimburse the utility for any item of worth or expense involved if performed at the written direction of the Local Public Agency. The Utility will be reimbursed for its actual costs of the work described in Exhibit "A" upon presentation of itemized bills to the Local Public Agency from the Utility.

Progress payments made by the Local Public Agency to the Utility shall not exceed ninety-seven percent (97%) of the estimated cost of the completed work. Reimbursement for progress billings shall be paid within sixty (60) days of receipt.

Partial payment shall not abrogate the Local Public Agency's or the State's right to dispute in good faith the Utility's claim for compensation. Such good faith disputes shall be resolved upon presentation of the Utility's final request for payment and the resolution of any audit performed in accordance with Section IX of this agreement.

## **SECTION VI – LUMP SUM PAYMENT METHOD**

The Utility may elect to petition the Local Public Agency for payment of its expenses by Lump Sum. Such petition shall include Exhibits "A" and "B" along with a detailed explanation requesting payment by lump sum and showing how all individuals will be best served by this payment method.

The Local Public Agency may make payment to the utility by lump sum if the total cost for the adjustments, removals, alterations, and/or relocations do not exceed \$25,000.00. Lump sum payments in excess of \$25,000 will be made only if in the best interests of the public in accordance with 23 CFR 645.113(f) and approved by the Federal Highway Administration.

If a lump sum payment is approved, the Utility shall submit one request for payment no later than ninety (90) days after the work is completed. No amount in excess of the agreed amount in Exhibit "B" shall be reimbursed.

## **SECTION VII - FINAL BILL**

The Utility shall present its final itemized bill accompanied by an itemized cumulative invoice within ninety (90) days of completion of its work. All documents required to substantiate any claims for payment shall be submitted with this final itemized bill. Such supporting documentation shall include, but shall not be limited to, copies of material invoices, time sheets, vendor and/or contractor invoices and other such documents as may be deemed by the State to support such invoice.

Upon receipt of a final bill, the Utility shall be reimbursed for such items of project work, expense and retainage within ninety (90) days after the resolution and issuance of any audit performed in accordance with Section IX.

## **SECTION VIII - RECORDS**

The Utility accounts and the accounts and records of any contractor or subcontractor involved in carrying out the proposed work shall be kept in such manner that they may be readily audited and actual costs determined, and such accounts shall be available for audit by auditors of the State, the Federal Highway Administration, and/or the Local Public Agency for a period of not less than three (3) years from the date final payment has been received by the Utility in accordance with 23 CFR 645.117.

Upon completion of the Utility's work, the Indiana Department of Transportation's Division of Accounting and Control may audit the Utility's records to determine the cost of relocation. Such audit shall be in accordance with generally accepted auditing standards and the appropriate cost principles as set forth in 48 CFR Part 31.

If the audit resolution shows that the Utility has been overpaid, the Local Public Agency shall bill the Utility for such overpayment and provide supporting documentation. The Utility shall pay the Local Public Agency within thirty-five (35) days after receipt of such bill and the Local Public Agency shall remit the Federal share to the State.

## **SECTION IX - DISCRIMINATION**

Pursuant to IC 22-9-1-10, the Utility, its Contractor and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract.

The Utility shall comply with the Regulations relative to Nondiscrimination in federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, incorporated by reference.

## **SECTION X - 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 Local Public Agency from and against any and all legal liabilities and other expenses, claims, costs, 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 said Department of Transportation and/or the Local Public Agency 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 Department of Transportation, the State, or the Local Public Agency.

#### **SECTION XI - INCORPORATION OF THE UTILITY POLICY GUIDE**

The Policy 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 Policy Guide.

#### **SECTION XII - PENALTIES/INTEREST/ATTORNEY'S FEES**

The Local Public Agency will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, and/or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 at seq.

#### **SECTION XIII - GOVERNING LAWS**

This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

#### **SECTION XIV - BINDING UPON SUCCESSORS OR ASSIGNS**

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

#### **SECTION XV - NON-COLLUSION AFFIDAVIT**

The Utility shall execute a Non-Collusion Affidavit, notarized with a seal, which is attached hereto and incorporated by reference. If the Utility is a governmental entity, the execution of a Non-Collusion affidavit shall not be required.

#### **SECTION XVI - MAINTAINING A DRUG-FREE WORKPLACE**

(A) The Utility and its subcontractors, if any, covenant and agree to make a good faith effort to provide and maintain during the term of this agreement a drug-free workplace, and that written notice will be given to the contracting Local Public Agency and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the Utility has been convicted of a criminal drug violation occurring in the Utility's workplace.

(B) In addition to the provisions of paragraph (A) above, if the total contract amount set forth in this agreement is in excess of \$25,000.00, the Utility and its subcontractors, if any, hereby further agree that this agreement is expressly subject to the terms, conditions and representations contained in the Drug-Free

Workplace certification executed by the Utility in conjunction with this agreement and which is appended as an attachment hereto.

(C) It is further expressly agreed that the failure of the Utility and its subcontractors, if any, to in good faith comply with the terms of paragraph (A) above, or falsifying or otherwise violating the terms of the certification referenced in paragraph (B) above, shall constitute a material breach of this agreement, and shall entitle the State and the Local Public Agency to impose sanctions against the Utility and its subcontractors, if any, including, but not limited to, suspension of contract payments, termination of this agreement and/or debarment of the Utility and its subcontractors, if any, from doing business with the State and the Local Public Agency for up to three (3) years.

#### **SECTION XVII – 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 Indiana Code 5-16-8-1, et al. and 23 CFR 635.410.

**The remainder of this page is intentionally left blank.**

**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)

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

and 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 Local Public Agency)

**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: \_\_\_\_\_