**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

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| **IN THE MATTER OF THE COMPLAINT BY THE CITY OF CARMEL, INDIANA AGAINST DUKE ENERGY INDIANA, LLC CONCERNING NON-COMPLIANCE WITH CERTAIN ORDINANCES PERTAINING TO RELOCATION OF UTILITY FACILITIES WITHIN THE CITY OF CARMEL'S PUBLIC RIGHT-OF-WAY** | ) | **CAUSE NO.** 45482 |
| **RESPONDENT: DUKE ENERGY INDIANA, LLC** | ) | |

# VERIFIED COMPLAINT

Complainant, the City of Carmel, Indiana ("City" or "Carmel"), by counsel, hereby petitions the Indiana Utility Regulatory Commission ("Commission") to: 1) find Carmel's Ordinance No. D-2491-19, as codified in Carmel City Code Chapter 9, Article 5, Section 9-218, and Ordinance No. D-2492-19, as codified in Carmel City Code Chapter 6, Article 9, Section 6-245 (together the "Ordinances") to be reasonable pursuant to Ind. Code § 8-1-2-101; 2) order Duke Energy Indiana, LLC ("Duke") (Duke and Carmel together being the "Parties") to relocate certain of its facilities located in Carmel's public right-of-way that interfere with Carmel's Guilford Road project and Carmel's 126th Street project in accordance with the Ordinances; and 3) order Duke to pay for the costs to relocate its facilities in accordance with the Provisional Utility Relocation Cost Payment Agreement agreed to by the Parties.

1. **Complainant's Status**. Carmel is a municipality located in Hamilton County, Indiana with its municipal office at One Civic Square, Carmel, Indiana 46032. Carmel is subject to the Commission's jurisdiction pursuant to Ind. Code § 8-1-2-101, which vests the Commission

with the authority to determine if a municipal ordinance or other determination is reasonable, and is a "qualified complainant" pursuant to Ind. Code § 8-1-2-101 and Ind. Code § 8-1-2-54.

2. **Respondent's Status**. Duke Energy Indiana, LLC is a limited liability company organized and existing under the laws of the State of Indiana, with its principal office at 1000 E. Main Street, Plainfield, Indiana 46168. It has the corporate power and authority to engage in the business of supplying electric utility service to the public in the State of Indiana, including to customers in Carmel. Duke is a "public utility" as defined by Ind. Code § 8-1-2-1 and is subject to the Commission's jurisdiction in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana.

3. **Relevant Facts.**

**A. Carmel's Ordinances**. On April 28, 2017, Carmel's Board of Public Works and Safety ("BPW") adopted BPW Resolution No. 04-28-17-01 (the "Resolution"). The Resolution required that all new utilities located within Carmel's right-of-way ("ROW") and/or a granted utility easement be placed underground or buried and prohibited the erection of all poles, overhead lines and associated overhead structures used or useful in the supplying of electric, communication, or similar and associated services within Carmel's ROW or granted utility easements. The Resolution also authorized all existing overhead poles, wires, and/or utility transmission lines to remain in the Carmel's ROW or a granted utility easement, but required that any replacement or relocation of such poles, wires and/or utility transmission lines must have prior written authorization from the BPW. A true and correct copy of the Resolution is attached hereto as Exhibit A. On November 6, 2017, Carmel's Common Council adopted Ordinance No. D-2395-17, which codified into Carmel City's Code at Chapter 6, Article 9, Section 6-245, the requirements of the Resolution.

On June 19, 2017, Carmel's Common Council adopted Ordinance No. D-2368-17. Among other things, Ordinance D-2368-17 required a public utility to relocate a public utility facility located along, under, upon, and/or across a City street, highway, or other public property due to a City road, street, sidewalk, trail, or other project and that such relocation be at the owner of the utility facility's expense at a time, place and manner determined by the City.

As a result of the Commission's findings in Cause No. 44804 regarding a dispute between Duke and the Town of Avon ("Avon") involving Avon's utility relocation ordinance, Carmel amended Ordinances D-2395-17 and D-2368-17. On October 21, 2019, Carmel's Common Council adopted Ordinance D-2492-19 (the "Underground District Ordinance") amending Ordinance D-2395-17. The Underground District Ordinance prohibits a person, corporation, or utility from erecting or constructing within the District any pole, overhead line, or associated overhead structure used and useful in supplying electric, communication or similar associated services ("Construction"), unless authorized by Carmel. The Underground District Ordinance establishes the BPW as the City's permit authority for granting permits for all Construction in the District pursuant to the Underground District Ordinance and other City ordinances regarding the placement of utility facilities in the City's ROW or in a utility easement granted by the City. The Underground District Ordinance requires that all utility facilities to be located within the District must be underground and/or buried where feasible based upon applicable safety requirements and engineering standards and to the extent allowed by Indiana law, unless expressly authorized by the BPW. A true and correct copy of the Underground District Ordinance is attached hereto as Exhibit B.

On October 21, 2019, Carmel's Common Council adopted Ordinance No. D-2491-19 (the "Relocation Ordinance") amending Ordinance D-2368-17. The Relocation Ordinance requires a

public utility to relocate a public utility facility located along, under, upon, and/or across a City street, highway, or other public property due to a City road, street, sidewalk, trail, or other project (a "City Project") in accordance with one of two methodologies. Subpart (a)(1) of the Relocation Ordinance ("Subpart (a)(1)") requires that if a City Project is subject to Indiana Department of Transportation ("INDOT") oversight (an "INDOT Project"), the public utility facility is to be relocated in accordance with INDOT's requirements and procedures, and must, to the extent possible, comply with Carmel City Code, Chapter 6, Article 9, Section 6-245 (*i.e.,* the Underground District Ordinance). The cost of a public utility relocation under Subpart (a)(1) is to be in accordance with INDOT's requirements, and to the extent the owner of a public utility facility is not reimbursed by INDOT, Carmel is not liable for the relocation costs unless it agrees otherwise.

Subpart (a)(2) of the Relocation Ordinance ("Subpart (a)(2)") establishes public utility facility relocation requirements for non-INDOT Projects. Subpart (a)(2) provides that if a City Project is not subject to INDOT oversight, the public utility facility is to be relocated at a time, place, and manner (including above or underground) as determined by Carmel based on several factors that Carmel must consider, including safety requirements, engineering and construction standards, the legality and feasibility of the new location, less costly alternatives that comply with Carmel's rules and standards, and other factors. The cost of a public utility relocation under Subpart (a)(2) is to be borne by the owner of the public utility facility, unless Carmel agrees otherwise. The owner of a public utility facility may seek a waiver of Carmel's relocation determination by submitting a written waiver request to Carmel's BPW. To the extent a City Project involves a public utility relocation within the District created by Carmel's Underground District Ordinance, the relocation must comply with the requirements of that ordinance. An owner

of a public utility facility that fails to relocate its facilities as required by the City's relocation determination under Subpart (a)(2) must reimburse Carmel for the relocation costs in the event Carmel relocates the facilities on behalf of the public utility. Subpart (a)(2) authorizes Carmel to charge a fine of $100 per day starting on the first day after the time period established by Carmel in the event the owner of a public utility facility fails to relocate its facilities as required by the City. A true and correct copy of the Relocation Ordinance is attached hereto as Exhibit C.

**B. The Guilford Road Project**. The Guilford Road project is a road reconstruction project located on and along Guilford Road from City Center Drive to Main Street in downtown Carmel (the "Guilford Road Project"). Carmel received federal funding for the Guilford Road Project in accordance with a Local Public Agency Project Coordination Contract entered into by Carmel and INDOT ("Guilford Road INDOT Contract"). Among other things, the Guilford Road INDOT Contract provides that the Local Public Agency (*i.e.,* Carmel) ("LPA") must comply with all applicable federal, state, and local laws, rules, regulations and ordinances. The Guilford Road INDOT Contract also provides that all utility coordination is to be in accordance with INDOT's regulations and that utilities occupying the project's right-of-way be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy ("UAP"). The UAP establishes procedures for utility relocation in the right-of-way to Indiana's state highway systems, and states that "a utility with facilities on public right-of-way **must relocate those facilities at their cost** if they are in conflict with the proposed improvement project" (emphasis added). The UAP also states that utilities are to install and relocate facilities "with due consideration for the safety, operation, maintenance and aesthetic characteristics of the highway and other users of the highway." True and correct copies of the

Guilford Road INDOT Contract and INDOT'S UAP are attached hereto as Exhibits D and E, respectively.

In accordance with INDOT's policies and regulations, Duke submitted a utility relocation Work Plan to the INDOT/LPA Utility Coordinator identified in the Work Plan in March and May 2018 (the "2018 Guilford Work Plan"). The 2018 Guilford Work Plan identified several Duke facilities that interfere with the Guilford Road Project and would need to be relocated. The facilities in conflict include overhead and underground lines, utility poles, and overhead equipment. The 2018 Guilford Work Plan also included construction of new utility facilities in Carmel's ROW to accommodate the relocation of Duke's existing facilities. Duke initially proposed in the 2018 Guilford Work Plan that its existing facilities be relocated as follows: (1) above-ground facilities would be relocated to above-ground locations; and (2) existing underground facilities would be relocated either underground or converted to above-ground. Duke also requested that the City's design for the Guilford Road Project be modified to allow existing poles to remain in place and to allow new above-ground poles. Carmel did not grant an exception to the Ordinances for above-ground relocation requests and therefore did not issue a Notice to Proceed for the 2018 Guilford Work Plan. Carmel asked Duke to develop a work plan for its facilities to be located underground, to the extent possible,[1] in accordance with the Ordinances to achieve the goal of the Ordinances, which is to improve the safety and general welfare of the public, enhance quality of life, and maintain or increase property values. During discussions between Duke and Carmel, several Carmel residents in the area expressed concerns about the aesthetic impact of above-ground relocation and above-ground new construction of Duke facilities. Although the Guilford Road Project is subject to INDOT's policies and regulations pursuant to the Guilford Road INDOT

[1] Carmel did allow a portion of Duke's facilities located along Main Street to be relocated above-ground as an exception to the Ordinances. Duke relocated these facilities without seeking reimbursement from Carmel.

Contract, INDOT deferred responsibility for utility relocation to Carmel, the LPA, and reimbursement for relocation costs is to be determined by DEI and Carmel. Attached hereto as Exhibit F is a letter from INDOT confirming that it deferred utility relocation to Carmel.

**C. The 126th Street Multi-Use Project.** The 126th Street Multi-Use project consists of a newly constructed multi-use trail along the north side of 126th Street between Keystone Avenue and Hazel Dell Parkway (the "126th Street Multi-Use Project") in Carmel. Carmel received federal funding for the 126th Street Multi-Use Project in accordance with a Local Public Agency Project Coordination Contract entered into by Carmel and INDOT ("126th Street INDOT Contract"). The 126th Street INDOT Contract is similar to the Guilford Road INDOT Contract, including the requirements that the LPA (*i.e.,* Carmel) must comply with all applicable federal, state, and local laws, rules, regulations and ordinances, utility coordination is to be in accordance with INDOT's regulations, and utilities occupying the project's right-of-way are to be regulated on a continuing basis by the LPA in accordance with INDOT's UAP, discussed *supra*. A true and correct copy of the 126th Street INDOT Contract is attached hereto as Exhibit G.

In accordance with INDOT's policies and regulations, Duke submitted a utility relocation Work Plan to the INDOT/LPA Utility Coordinator identified in the Work Plan in April 2018 (the "126th Street Work Plan"). The 126th Street Work Plan identified Duke facilities that interfere with the 126th Street Multi-Use Project, including overhead poles and lines that would need to be relocated. Above-ground relocation was requested by Duke, and Carmel allowed above-ground relocation as an exception to the Underground District Ordinance due to Carmel's determination that underground relocation would be unreasonable based on the cost, safety, reliability, and the lack of aesthetic benefits of underground relocation. During the utility coordination process with INDOT, Duke sought reimbursement for all of the relocation costs from Carmel due to Duke's

assertion that the 126th Street Multi-Use Project is not a "highway" project, and therefore Duke is not responsible for the relocation costs. Although the 126th Street Multi-Use Project is subject to INDOT's policies and regulations pursuant to the 126th Street INDOT Contract, INDOT deferred responsibility for utility relocation to Carmel, and reimbursement of relocation costs is to be determined by Duke and Carmel. See Exhibit F.

**D. The Relocation Costs Dispute**. Carmel and Duke were unable to reach an agreement on who should pay the costs for relocation of Duke's facilities based on the initial work plans submitted by Duke. Duke requested that Carmel enter into a Provisional Utility Relocation Cost Payment Agreement ("PURCPA"), which the Parties finalized on April 15, 2020. A true and correct copy of the PURCPA is attached hereto as Exhibit H. The PURCPA governs the payment of disputed relocation costs of Duke's facilities located in Carmel's ROW for the Guilford Road Project, the 126th Street Multi-Use Project, and other projects to be approved by the City pursuant to a separate Utility Reimbursement Agreement ("URA") for each project. The PURCPA addresses two types of projects with disputed utility relocation costs: (1) road improvement projects involving a "cost differential", *i.e.*, the difference between (a) the cost of relocating a utility facility from above-ground to another above-ground location, and (b) relocating a utility facility from above-ground to an underground location (the "Road Improvement Disputed Costs"); and (2) for multi-use and non-road improvement projects (*e.g.*, bike and trail projects), the entire utility facility relocation cost (the "Multi-Use Disputed Costs").

In order for construction of the Guilford Road Project and 126th Street Multi-Use Project (together the "Projects") to proceed, Carmel agreed to sign the PURCPA and to pay upfront 50% of the Road Improvement Disputed Costs and 50% of the Multi-Use Disputed Costs in accordance with the requirements of the PURCPA. The disputed costs for a particular project are identified in

the URA for that project. The Road Improvement Disputed Costs for the Guilford Road Project are $560,641.38, and the Multi-Use Disputed Costs for the 126th Street Multi-Use Project are $30,211.93. True and correct copies of the URAs for the Guilford Road Project and the 126th Street Multi-Use Project are attached hereto as Exhibits I and J, respectively. Carmel approved final versions of the 2018 Guilford Work Plan and 126th Street Work Plan in October 2020 subject to the PURCPA.

4. **Carmel's Argument**. Statutory and Commission precedent support the reasonableness of Carmel's Ordinances, and therefore Duke is responsible for paying the Road Improvement Disputed Costs and the Multi-Use Disputed Costs in accordance with the Ordinances and as agreed to in the PURCPA. Indiana Code § 8-1-2-101(a)(1) ("Section 101") authorizes a municipality to "determine by ordinance the provisions… upon which a public utility… occupies the areas along, under, upon, and across the streets, highways, or other public property within such municipality or county, and such ordinance or other determination of such municipality… shall be in force and prima facie reasonable…" Section 101 grants Carmel the authority to regulate public utility facilities located in its ROW upon adoption of an ordinance. That is precisely what Carmel has done by adopting the Ordinances and enforcing them.

Carmel's Underground District Ordinance regulates public utility facilities in the City's ROW and granted utility easements by prohibiting within the District the construction of above-ground poles, overhead lines, or associated structures that are used and useful in supplying electric services, unless authorized by the City. The creation of the District and the requirement that construction of new electric facilities be underground unless authorized by the City clearly fit within the authority granted by Section 101 to "determine… the provisions upon which a public utility" occupies the City's streets, highways, or public property. Both Projects involve the City's

streets and public property (*i.e.,* City ROW), and therefore the Underground District Ordinance properly applies to them pursuant to Section 101.

The Relocation Ordinance is also consistent with the authority granted by Section 101. The Relocation Ordinance requires a public utility to relocate its facilities located along, under, upon, and/or across a City street, highway, or other public property due to a City road, street, sidewalk, trail, or other project (a "City Project"). This requirement is consistent with Section 101 in that it regulates a public utility's facilities "located along, under, upon, and across the streets, highways, or other public property" of the City. Both the Guilford Road Project and the 126th Street Multi-Use Project involve the City's streets and other public property (*i.e*., City ROW), and therefore the Relocation Ordinance properly applies to them pursuant to Section 101.

A key requirement of Section 101 is that an ordinance adopted by a municipality pursuant to Section 101 must be reasonable. In Cause No. 44804, the Commission addressed the reasonableness of the Town of Avon's ("Avon") utility relocation ordinance and ultimately found Avon's ordinance to be unreasonable and void pursuant to Section 101. *In re Complaint of Duke Energy Indiana, LLC*, Cause No. 44804, 2019 WL 342923, at *17 (IURC Jan. 23, 2019) ("*Duke/Avon*"). In finding the Avon ordinance to be unreasonable, the Commission recognized that pursuant to Section 101, a municipality has the statutory authority to determine the provisions by which a utility occupies the public rights-of-way within its boundaries, but the exercise of such authority must be reasonable and not inconsistent with Section 101. *Id.* at *8.

The Commission identified several factors in *Duke/Avon* for determining the reasonableness of an ordinance under Section 101. The Commission found that a municipality must show some constraint in its regulation of utility facilities in the ROW, and to do so a municipality should consider, among other things, less costly alternatives, whether a new location

is legal and feasible, weather, design constraints, and the impact on the utility's customers. *Id*. at *12. The Commission also found that an ordinance regulating a utility facility in the municipality's ROW cannot conflict with INDOT's regulations if a project is subject to INDOT oversight. *Id*. at *10 - *12. The Ordinances take into account these factors, and Carmel has exercised constraint in enforcing its Section 101 authority for both Projects.

The Underground District Ordinance requires that all utility facilities to be located within the District must be underground and/or buried **where feasible** based upon applicable safety requirements and engineering standards and to the extent allowed by Indiana law, unless expressly authorized by the BPW. The Underground District Ordinance recognizes that an underground/buried location may not be feasible in all situations, as is the case with the 126th Street Multi-Use Project and part of the Guilford Road Project where Carmel allowed above-ground relocation due to its determination that underground relocation was not feasible based upon its consideration of safety, reliability, aesthetic benefits, and other factors. The Underground District Ordinance does not mandate that utility facilities be relocated underground in all situations. It provides for a permitting process through the City's BPW and allows for the BPW to grant waivers if an underground relocation is not feasible.[2]

The Relocation Ordinance requires Carmel to consider several factors when making a relocation determination. Unlike the ordinance at issue in *Duke/Avon*, the Relocation Ordinance provides that if a project is an INDOT Project, it is subject to INDOT's utility relocation policies and procedures pursuant to Subpart (a)(1). Under Subpart (a)(2), if a project is not an INDOT Project, the relocation determination is to be made by Carmel based upon its consideration of several factors including safety requirements, engineering and construction standards, and less

[2] As noted above, Carmel allowed above-ground relocation as an exception to the underground and/or buried requirement for several of Duke's facilities.

costly alternatives. As shown in Exhibit F, INDOT deferred responsibility for utility relocation to Carmel for both Projects, leaving the question of utility relocation cost reimbursement to be resolved by Duke and Carmel pursuant to the terms of the PURCPA, which authorizes the Commission to resolve the dispute. As a result of INDOT not applying its utility relocation standards and deferring utility relocation responsibility to Carmel, Carmel applied its standards pursuant to the requirements of Subpart (a)(2) of the Relocation Ordinance in making its relocation determinations for the Projects.

Carmel's application of the Relocation Ordinance to the Guilford Road Project is reasonable and within the authority granted by Section 101. Carmel determined underground relocation for many of Duke's facilities to be safe[3], technologically feasible[4], and consistent with the City's aesthetic objectives[5] while addressing concerns raised by residents in the neighborhood. Carmel is not requiring all of Duke's facilities related to the Guilford Road Project to be located underground. After making reasonable consideration of the factors required by Subsection (a)(2), Carmel determined that above-ground location was appropriate for some of Duke's facilities, including new poles and aerial lines. To date, Duke has completed significant portions of the above-ground relocation work. Thus, the relocation determinations made by Carmel for the Guilford Road Project include a combination of above-ground and underground facilities, which

[3] Public safety and community health are significant concerns for Carmel. There are many recent examples of above-ground electric facilities causing power outages. Downed power lines due to winter storms have resulted in large portions of Carmel losing power during the dead of winter, resulting in Carmel opening public warming centers. Carmel's Ordinances seek to alleviate these safety concerns.

[4] Underground relocation for many of Duke's facilities is feasible, as reflected in the final work plan agreed to by Duke and Carmel. If underground relocation wasn't feasible, Carmel agreed to above-ground relocation.

[5] Carmel has a longstanding policy of encouraging electric and other facilities to be underground for the benefit of architecture within the City and pedestrian infrastructure. *See, e.g.,* Carmel's Comprehensive Plan, found at: https://www.carmel.in.gov/department-services/community-services-planning-and-zoning-/carmel-clay-comprehensive-plan-c3 (last updated June 1, 2020).

reflect consideration of the factors identified in *Duke/Avon* and that are required by the Relocation Ordinance.

Carmel's application of the Relocation Ordinance to the 126th Street Multi-Use Project is also reasonable. Carmel is allowing above-ground location for Duke's facilities due to its determination, based on the factors established by Subpart (a)(2), that an underground location would not be feasible. Duke disputes having to pay the relocation costs for the 126th Street Multi-Use Project not because of the above-ground location determination, but on the basis that the project is a multi-use project and not a highway project. Such a distinction is irrelevant for purposes of Carmel's authority under Section 101. *See Duke/Avon* at *9. As the Commission noted in *Duke/Avon*, "the exercise of a municipality's police powers is not limited to road projects." *Id.*

Carmel has the police power to regulate public utility facilities in its ROW in the interest of public health, safety, and convenience. *See S. Ind. Gas & Elec. Co., v. Dep't of Highways*, 533 N.E.2d 1289, 1292 (Ind. Ct. App. 1989). The Ordinances promote the health, safety and convenience of the public by regulating public utility facilities that interfere with City projects that are for the benefit of the public. Carmel has exercised its Section 101 authority fairly, reasonably and consistent with Indiana law.

5. **Applicable Statutes**. The Commission has jurisdiction over this matter pursuant to Ind. Code § 8-1-2-101(a)(1). Other statutes that are or may be relevant to this proceeding include Ind. Code §§ 8-1-2-54 through -67.

6. **Counsel**. Carmel is represented in this matter by the following counsel who are duly authorized to accept service of papers in this Cause on behalf of Carmel:

Randolph L. Seger (240-49)
Michael T. Griffiths (26384-49)
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7. **Relief Requested**. Carmel requests that the Commission:

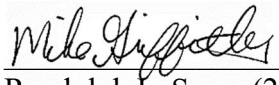
a. find the Ordinances are reasonable pursuant to Ind. Code § 8-1-2-101(a)(1).

b. order Duke to relocate its facilities located in Carmel's public right-of-way that interfere with the Guilford Road Project and 126th Street Multi-Use Project in accordance with the Ordinances.

c. order Duke to pay for the Road Improvement Disputed Costs and the Multi-Use Disputed Costs in accordance with the Provisional Utility Relocation Cost Payment Agreement agreed to by the Parties.

WHEREFORE, Carmel respectfully requests that the Commission exercise its jurisdiction in accordance with Ind. Code § 8-1-2-101(a)(1), order an evidentiary hearing, and after such evidentiary hearing, find and order the relief requested by Carmel.

Respectfully submitted,



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Attorneys for the City of Carmel, Indiana

## VERIFICATION

I, Jeremy Kashman, City Engineer for the City of Carmel, Indiana, do hereby swear and affirm under penalties of perjury, that I have read the foregoing Verified Complaint and that the representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Jeremy Kashman, PE
City of Carmel

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 13th day of January, 2021, to the following:

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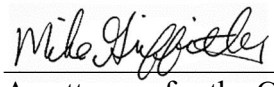

An attorney for the City of Carmel, Indiana

EXHIBIT A

# BPW RESOLUTION NO. 04-28-17-01

## A RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF CARMEL, INDIANA, TO ESTABLISH AN UNDERGROUND AND BURIED UTILITY DISTRICT

**WHEREAS,** the City of Carmel, Indiana ("City"), pursuant to I.C. 36-9-2-7, may regulate the use of public ways; and

**WHEREAS,** for the past two decades, the City has established a policy and practice to require utilities and utility facilities located in the rights-of-way ("ROW") to be buried or placed underground; and

**WHEREAS,** on September 18, 2000, the Common Council of the City of Carmel, Indiana, ("Council") passed Ordinance D-1479-00 that required all cable operators who provide cable service over a cable system, to place its cables and other equipment underground in all areas of the City where both telephone and electric utilities' facilities are placed underground; and

**WHEREAS,** pursuant to I.C. 36-7-4-510(b) on May 20, 2009, the Carmel Advisory Plan Commission approved Resolution CC-05-04-09-02 adopting the Carmel Clay Comprehensive Plan ("C3 Plan 2009"), as Amended by the Council; and

**WHEREAS,** the C3 Plan 2009 encouraged all new utilities that supply electric, communication or similar and associated services in newly developed or redeveloped urban areas be placed underground and buried within the City's rights-of-way ("ROW"); and

**WHEREAS,** pursuant to I.C. 36-4-9-5, the City has established the Board of Public Works and Safety ("BPW") to administer public utilities and regulate the City's rights-of-way ("ROW"); and

**WHEREAS,** public necessity, health and safety now require that all new utilities located within the City's ROW and/or a granted utility easement shall be placed underground or buried, and the City, by and through the BPW, now finds that it is in the best interests of the public health, safety, and general welfare of its citizens to prohibit the erection of all poles, overhead lines, and associated overhead structures used or useful in supplying electric, communication or similar and associated services within the City's ROW or granted utility easement; and

**WHEREAS,** to further the aforementioned public necessity, and to comply with the provisions required under I.C. 8-1-32.3-15, as added by P.L. 145-2015, Section 3, the BPW now hereby establishes an Underground and Buried Utilities District ("Area") and designates the Area to be in effect throughout all ROW within the corporate boundaries of the City.

**NOW, THEREFORE, BE IT RESOLVED,** by the City of Carmel Board of Public Works and Safety as follows:

This Resolution was prepared by Ashley M. Ulbricht, Carmel City Attorney, on 4/28/17 at 9:16 AM. No subsequent revision to this Ordinance has been reviewed by Ms. Ulbricht for legal sufficiency or otherwise.

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. The City hereby establishes an Underground and Buried Utilities District ("Area") to be in effect April 30, 2017, and to apply throughout the City's ROW and granted utility easements, and is hereinafter defined as follows:

a. In all areas of the City where no overhead or above ground utilities, utility facilities, overhead lines, or associated overhead structures used or useful in supplying electric, communication or similar and associated services currently exist;

b. In all areas of the City where planned road projects, redevelopment areas and/or economic development areas provide for and require underground buried utilities and utility facilities, including but not limited to electric, communication or similar and associated services;

c. In all areas of the City that would require compliance with Ordinance D-1479-00, as amended, and the C3 Plan 2009, as amended;

d. All other areas of ROW or proposed ROW throughout the City, or in a utility easement granted by the City, whether or not above ground utilities or utility facilities currently exist.

e. Notwithstanding subsections (a) through (d) above, any utility that requires construction, placement, or use of a small cell facility in an Area designated strictly for underground or buried utilities, may submit an application to the BPW requesting a waiver to install new utility poles or new wireless support structures within the Area pursuant to provisions stated in Ordinance D-2355-17, as amended.

Section 3. From and after the effective date of this Resolution, no person, corporation, or utility shall erect or construct within the City's ROW or granted utility easement, any pole, overhead line, or associated overhead structure used or useful in supplying electric, communication or similar associated services.

Section 4. Unless otherwise expressly authorized by the City's BPW, all utilities located within the City's ROW or a granted utility easement shall be placed underground and/or buried.

Section 5. All existing overhead poles, wires, and/or utility transmission lines may remain within the City's ROW or utility easement, but may not be replaced or relocated without prior written authorization of the BPW.

Section 6. If any portion of this Resolution is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Resolution so long as enforcement of same can be given the same effect.

This Resolution was prepared by Ashley M. Ulbricht, Carmel City Attorney, on 4/28/17 at 9:16 AM. No subsequent revision to this Ordinance has been reviewed by Ms. Ulbricht for legal sufficiency or otherwise.

Section 7. This Resolution shall be in full force and effect from and after the date of its passage.
SO RESOLVED this 28th day of April, 2017.

CITY OF CARMEL, INDIANA
By and through its Board of Public Works and Safety

BY:

James Brainard, Presiding Officer
Date: 4-28-17

Mary Ann Burke, Member
Date: 4-28-17

Lori S. Watson, Member
Date: 4/28/17

ATTEST:

Christine Pauley, Clerk-Treasurer
Date: 4/28/17

This Resolution was prepared by Ashley M. Ulbricht, Carmel City Attorney, on 4/28/17 at 9:16 AM. No subsequent revision to this Ordinance has been reviewed by Ms. Ulbricht for legal sufficiency or otherwise.

**EXHIBIT B**

SPONSOR: Councilor Worrell

# ORDINANCE D-2492-19

## AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL AMENDING CHAPTER 6, SECTION 6-245 OF THE CARMEL CITY CODE

**Synopsis: This ordinance amends the City's Ordinance No. D 2395-17, as codified in Chapter 6, Article 9, Section 6-245 of the Carmel City Code, regarding the establishment by the City of an Underground and Buried Utilities District.**

**WHEREAS**, Indiana Code Section 8-1-2-101 authorizes the City to determine by ordinance the terms under which a public utility occupies the areas along, under, upon, and across its public streets, highways, and other public property;

**WHEREAS**, the City, pursuant to Indiana Code Section 8-1-32.3-15, enjoys control over the public rights-of-way within its corporate limits, including, but not limited to, the placement of utility poles and wireless service facilities by a communications service provider;

**WHEREAS**, in accordance with Indiana Code Sections 8-1-2-101 and 8-1-32.3-15, the City's Board of Public Works ("BPW") adopted BPW Resolution No. 04-28-17-01 on April 28, 2017, establishing an Underground and Buried Utilities District to be in effect April 30, 2017, that applies throughout the City's ROW and granted utility easements (the "Resolution");

**WHEREAS**, on November 6, 2017, the City adopted Ordinance No. D 2395-17, which added Chapter 6, Article 9, Section 6-245 to the Carmel City Code ("Section 6-245"), for the purpose of codifying the requirements of the Resolution in the City's Code of Ordinances;

**WHEREAS**, on January 23, 2019, the Indiana Utility Regulatory Commission ("IURC" or "Commission") issued a final order in a proceeding involving a dispute between Duke Energy Indiana and the Town of Avon ("Avon") regarding an ordinance for the relocation of public utility facilities located in Avon's right-of-way (the "Avon Order"). In the Avon Order, the Commission made findings on the reasonableness of Avon's ordinance pursuant to Indiana Code Section 8-1-2-101 and ultimately found Avon's ordinance to be unreasonable and void;

**WHEREAS**, the City desires to amend Section 6-245 to exercise its authority under Indiana Code Sections 8-1-2-101 and 8-1-32.3-15 to regulate the placement of utility facilities within the City's Underground and Buried Utilities District and to make such regulation consistent with the Commission's findings in the Avon Order; and

**WHEREAS**, the Carmel Common Council now finds that Section 6-245 should be amended in order to address the Commission's findings in the Avon Order and to further articulate the City's policy regarding the placement of utility facilities in the City's Underground and Buried Utilities District.

**NOW, THEREFORE, BE IT ORDAINED**, by the Common Council of the City of Carmel, Indiana, as follows:

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. Chapter 6, Article 9, Section 6-245 of the Carmel City Code should be and is hereby amended as follows:

{additions are in underline face type and deletions are in strikeout face type}

**"6-245 Underground and Buried Utilities District**

(a) An Underground and Buried Utilities District (the "District") has been established by the BPW on April 28, 2017 and is effective April 30, 2017, and such District applies throughout the City's ROW and granted utility easements. The District consists of the following:

(1) All areas of the City where no overhead or above ground utilities, utility facilities, overhead lines, or associated overhead structures used or useful in supplying electric, communication, or similar and associated services currently exist;

(2) All areas of the City where planned road projects, redevelopment areas and/or economic development areas provide for and require underground buried utilities and utility facilities, including but not limited to electric, communication or similar and associated services;

(3) All other areas of ROW or proposed ROW throughout the City, or in a utility easement granted by the City, whether or not above ground utilities or utility facilities currently exist;

(4) All areas of the City that would require compliance with previously adopted ordinances, including Ordinance D-1479-00 (pertaining to the provision of cable service and the placement of cable facilities underground) and Ordinance D-2355-17 (pertaining to the erection of new wireless support structures and small cell facilities, the collocation of wireless support structures and small cell facilities, and the modification of existing wireless support structures and small cell facilities, within the City's ROW).

(5) Notwithstanding subsections (1) through (4) above, any utility that requires construction, placement, or use of a small cell facility in the District may submit an application to the BPW requesting a waiver to install new utility poles or new wireless support structures within the District pursuant to provisions stated in the City's Ordinance D-2355-17, as amended.

(b) From and after April 30, 2017, no person, corporation, or utility shall erect or construct within the District, any pole, overhead line, or associated overhead structure used and useful in supplying electric, communication or similar associated services ("Construction"), unless authorized by the City.

(c) The BPW is the City's permit authority for the granting of permits for all Construction in the City's ROW and in the City's granted utility easements. The BPW shall have the authority to review all requests for Construction and shall have the authority to grant waivers of requirements set out in this Ordinance as set out in an Applicant's permit request as submitted by a utility or a communications provider pursuant to this Section 6-245 of the Carmel City Code, Chapter 9, Article 5, Section 9-218 of the Carmel City Code, and other ordinances regarding the placement of utility facilities in the City's right-of-way or in a utility easement granted by the City. Unless expressly authorized by the BPW, all utility facilities to be located within the District shall be placed underground and/or buried where feasible based upon applicable safety requirements and engineering standards and to the extent allowed by Indiana law.

(d) All existing overhead poles, wires, and/or utility transmission lines ("Existing Facilities") may remain within the District, but may not be replaced or relocated without prior approval of the BPW. Any relocation of Existing Facilities is subject to requirements set forth in the City's Ordinance D-2368-17 (pertaining to the relocation of public utility facilities in areas along, under, upon and across City streets, highways and other public property), as amended.

Section 3. If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of the same can be given the same effect.

Section 4. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor and such publication as required by law.

**PASSED** by the Common Council of the City of Carmel, Indiana this 21st day of October 2019, by a vote of 7 ayes and 0 nays.

**COMMON COUNCIL FOR THE CITY OF CARMEL**

Jeff Worrell, President

Laura D. Campbell, Vice-President

Ronald E. Carter

Sue Finkam

Anthony Green

H. Bruce Kimball

Kevin D. Rider



20449483.1

SPONSOR: Councilor Worrell

ATTEST:

Christine S. Pauley, Clerk-Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana this 22nd day of October 2019, at 11:15 A.M.

for Christine S. Pauley, Clerk-Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this 22nd day of October 2019, at 5-0 M.

James Brainard, Mayor

ATTEST:

Christine S. Pauley, Clerk-Treasurer

**EXHIBIT C**

SPONSOR: Councilor Worrell

# ORDINANCE D-2491-19

## AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA REGARDING PUBLIC UTILITY RELOCATION IN CITY STREETS, HIGHWAYS, AND OTHER PUBLIC PROPERTY

**Synopsis: This ordinance amends the City's Ordinance D-2368-17, as codified in Chapter 9, Article 5, Section 9-218 of the Carmel City Code, regarding public utility relocations in areas along, under, upon and across City streets, highways and other public property.**

**WHEREAS**, Indiana Code Section 8-1-2-101 authorizes the City to determine by ordinance the terms under which a public utility occupies the areas along, under, upon, and across its public streets, highways, and other public property;

**WHEREAS**, On June 19, 2017, the Common Council of the City of Carmel ("City") adopted Ordinance D-2368-17, which added Chapter 9, Article 5, Section 9-218 ("Section 9-218") to the Carmel City Code. The purpose of Section 9-218 is to establish the City's policy regarding public utility relocations in areas along, under, upon, and across City streets, highways, and other public property, the party to bear the costs associated with such relocations, and penalty provisions for non-compliance;

**WHEREAS**, on January 23, 2019, the Indiana Utility Regulatory Commission ("IURC" or "Commission") issued a final order in a proceeding involving a dispute between Duke Energy Indiana and the Town of Avon ("Avon") regarding an ordinance similar to the City's Ordinance D-2368-17 (the "Avon Order"). In the Avon Order, the Commission made findings on the reasonableness of Avon's ordinance pursuant to Indiana Code Section 8-1-2-101 and ultimately found Avon's ordinance to be unreasonable and void;

**WHEREAS**, the City desires to amend Section 9-218 to exercise its authority under Indiana Code Section 8-1-2-101 to regulate the occupation by public utilities of the areas along, under, upon, and across the City's streets, highways, and other public property and to make such regulation consistent with the Commission's findings in the Avon Order; and

**WHEREAS**, the Carmel Common Council now finds that Section 9-218 should be amended in order to address the Commission's findings in the Avon Order and to further articulate the City's policy regarding public utility relocation;

**NOW, THEREFORE, BE IT ORDAINED,** by the Common Council of the City of Carmel, Indiana, as follows:

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. Chapter 9, Article 5, Section 9-218 of the Carmel City Code should be and is hereby amended as follows:

"§9-218 **Relocation of Public Utility Facilities**

(a) If it is necessary for a public utility facility located along, under, upon, and/or across a City street, highway, or other public property to be relocated because of a City road project, street project, sidewalk project, trail project or other project, or any combination thereof ("Project"), the owner of the public utility facility shall relocate that facility in accordance with the following procedures:

(1) If a Project is subject to the oversight of the Indiana Department of Transportation ("INDOT") (an "INDOT Project"), the facility shall be relocated in accordance with INDOT regulations found at 105 IAC 13. Any relocation work plan agreed to by the owner of a public utility facility for an INDOT Project must, to the extent possible, comply with Chapter 6, Article 9, Section 6-245 of the Carmel City Code, which establishes an Underground and Buried Utilities District within the City in accordance with Indiana Code Sections 8-1-32.3-15 and 8-1-2-101. The City may, in coordination with INDOT and the owner of a public utility facility, recommend a place for the relocation of a public utility facility. To the extent the owner of a public utility facility is not reimbursed by INDOT for the costs of relocating a public utility facility for an INDOT Project, the City shall not be liable for any relocation costs, unless the City agrees otherwise.

(2) If a Project is not subject to the oversight of INDOT (a "City Project"), the owner of the public utility facility shall relocate that facility at a time, place and manner (including above or underground) as determined by the City ("Relocation Determination"). The City, in making a Relocation Determination, shall consider the following: safety requirements; engineering and construction standards; the legality and feasibility of the new location; less costly alternatives that comply with the City's laws, rules and standards; and factors that may prevent utilities from relocating their facilities such as weather and availability of materials. The cost for relocation of a public utility facility due to a City Project shall be borne by the owner of the public utility facility, unless the City agrees otherwise. An owner of a public utility facility may seek a waiver of a Relocation Determination by providing a written waiver request to the City's Board of Public Works ("BPW") within thirty (30) calendar days of the Relocation Determination. BPW shall respond to a waiver request within thirty (30) calendar days of receipt of the waiver request. To the extent a City Project involves relocation of a public utility facility within the City's Underground and Buried Utilities District pursuant to Chapter 6, Article 9, Section 6-245 ("Section 6-245"), such relocation shall comply with the requirements of Section 6-245.

(b) If a public utility facility owner fails to relocate its facility as directed by the City pursuant to subsection (a)(2) hereinabove, the City shall have the right to relocate that facility. If the City exercises its right to relocate the facility, the owner of the facility shall reimburse the City for the cost of such relocation within thirty (30) calendar days from the date of the owner's receipt of the City's notice of the cost of relocation. If the owner fails to fully and timely reimburse the City for these relocation costs, the City shall have the right to collect these costs by exercising any available legal remedy, including, but not limited to, obtaining a money judgment for the costs incurred by the City in relocating the facility.

(c) Any owner of a public utility facility that fails to relocate that facility in accordance with a Relocation Determination made by the City pursuant to subsection (a)(2) hereinabove shall be subject to a fine in the amount of $100 per day starting on the first day after the time period specified in a Relocation Determination or other time period agreed to by the City if a waiver has been granted in addition to any amounts owed to the City pursuant to subsection (b) hereinabove."

Section 3. The remaining sections of Carmel City Code Chapter 9, Article 5 are not affected by this Ordinance and shall remain in full force and effect.

Section 4. If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

Section 5. This Ordinance shall be in full force and effect from and after the date and time of its passage and signing by the Mayor.

SPONSOR: Councilor Worrell

**PASSED** by the Common Council of the City of Carmel, Indiana this 21st day of October 2019, by a vote of 7 ayes and 0 nays.

**COMMON COUNCIL FOR THE CITY OF CARMEL**

Jeff Worrell, President

Anthony Green

Laura D. Campbell, Vice-President

H. Bruce Kimball

Ronald E. Carter

Kevin D. Rider

Sue Finkam

ATTEST:

Christine S. Pauley, Clerk-Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana this 22nd day of October 2019, at 11:00 A.M.

Deanne Wellhelt, Dir. of Finance
for Christine S. Pauley, Clerk-Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this 22nd day of OCTOBER 2019, at 5 P.M.

James Brainard, Mayor

ATTEST:

Christine S. Pauley, Clerk-Treasurer

# INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY PROJECT COORDINATION CONTRACT

**EDS #: A249-15-L140020**
**Des. No.: 1383180**
**CFDA No.: 20.205**


This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Carmel**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

## NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. Notices to INDOT regarding project management shall be sent to respective District Office:

**Greenfield District Office**
**31 South Broadway**
**Greenfield, Indiana 46140**

C. Notices to the LPA shall be sent to:

**City of Carmel**
**One Civic Square**
**Carmel, Indiana 46032**

## RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" and "Notice to PARTIES" above are hereby made an integral part and specifically incorporated into this Contract.

**SECTION I PROJECT DESCRIPTION.** INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

**SECTION II LPA RESPONSIBILITIES.** The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

**SECTION III INDOT RESPONSIBILITIES.** INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

**SECTION IV PROJECT FUNDS.** INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

**SECTION V TERM AND SCHEDULE.**

A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract) between **July 1, 2017 and June 30, 2018**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.

B. In the event that federal funds for the Project are not obligated during the period listed in section V.A., the federal funds allocated to the Project will lapse.

**SECTION VI GENERAL PROVISIONS**

A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

B. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

C. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the LPA's fiscal year. The LPA agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the LPA is not out of compliance with the financial aspects of this Contract.

D. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.

3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

**E. <u>Compliance with Laws</u>.**

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.

2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.

3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."

4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<http://www.in.gov/ethics/>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4 and under any other applicable State or Federal laws.

5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.

6. As required by I.C. 5-22-3-7:

   (1) The LPA and any officials of the LPA certify that:
      (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
         (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
         (ii) IC §24-5-12 [Telephone Solicitations]; or
         (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
      (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

   (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,

      (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

      (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

**F.** **Disadvantaged Business Enterprise Program.** Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

> The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

**G.** **Disputes.**

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.

3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

**H.** **Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of $25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2)

notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

I. **Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

J. **Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

K. **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.

L. **Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees , individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

(a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

(b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

(c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or

(d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

**M.** **Merger & Modification**. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

**N.** **No Investment in Iran.** As required by IC 5-22-16.5, the LPA certifies that the LPA is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.

**O.** **Non-Discrimination.**

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under 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, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least $50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

   It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

   a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

   b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

   c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.

   d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

   e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.

   f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means

of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

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

**Q.** **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

**R.** **Pollution Control Requirements.** If this Contract is for $100,000 or more, the LPA:

1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and

3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.

**S.** **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

**T.** **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

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

**Non-Collusion**

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

**LPA: City of Carmel**

James Brainard, Presiding Officer
Print or type name and title

Signature and date

Mary Ann Burke, Member
Print or type name and title

Signature and date

Lori S. Watson, Member
Print or type name and title

Signature and date

**LPA DUNS #** 087033320

Attest

Auditor or Clerk Treasurer
Diana Cordray, IMCA, Clerk-Treasurer

Sandra M Johnson
Deputy Clerk Pro

This instrument prepared by:
Ellen Hite
November 3, 2014

**STATE OF INDIANA**
**Department of Transportation**

**Recommended for approval by:**

Robert D. Cales, Director
Contract Administration Division

Date: 7/17/2015

**Executed by:**

Deputy Commissioner (FOR)
Brandye Hendrickson, Commissioner

Date: 7/21/2015

**Department of Administration**

(for)
Jessica Robertson, Commissioner

Date: 7/27/15

**State Budget Agency**

Brian E. Bailey, Director

Date: 8-4-15

**Approved as to Form and Legality:**

(FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: 8-7-2015

**ATTACHMENT A**

**PROJECT DESCRIPTION**

Des. No.: **1383180**

Program: **Group I**

Type of Project: **Road Reconstruction (3R/4R Standards)**

Location: **Guilford Rd**

A general scope/description of the Project is as follows:

**A project for road reconstruction (3R/4R standards) for Guilford Road from City Center to Main Street, in the City of Carmel, Hamilton County, Indiana.**

## ATTACHMENT B

## LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/div/contracts/standards/dm.html) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See http://www.in.gov/indot/7287.htm.). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See http://www.in.gov/indot/3018.htm).

2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure.

3. REQUIREMENTS FOR ADDITIONAL CONTRACTS

   A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:

      1. use the "LPA-CONSULTANT Agreement", which is found at http://www.in.gov/indot/div/projects/LPASection/ and is incorporated by reference; or

      2. use a form of agreement that has been reviewed and approved by INDOT.

4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.

5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.

6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.

8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.

9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.

11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.

    A. If project inspection will be provided by full-time LPA employees:
    The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

    or

    B. If project inspection will be provided by the LPA's consultant:
    INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.

13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See http://www.in.gov/indot/2376.htm). The LPA shall execute written use and occupancy contracts as defined in this Policy.

14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:

    a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.

    b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:

        1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.

        2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.

        3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.

    c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:

        1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.

        2. INDOT may elect to pay its obligations under the provisions of the construction contract.

        3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.

d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.

e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

# ATTACHMENT C

## INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.

2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.

3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.

4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.

5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.

6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.

7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.

8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.

9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.

10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.

11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

**ATTACHMENT D**

**PROJECT FUNDS**

**I. Project Costs.**

A. If the Program shown on Attachment A is receiving **Group I** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80%** of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is **$ 2,800,000.00**.

X

OR

B. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____ % of the eligible Project costs. The maximum amount of federal funds allocated to the project is $ _____.

____

C. The LPA understands and agrees that in accordance with I.C. 8-23-2-14, federal reimbursement for construction inspection and testing construction materials, after INDOT retains 2.5% of the final construction costs for oversight, is limited to:

(1) 14.5% of the final construction cost if the final construction cost is less than or equal to $500,000; or

(2) 12.5% of the final construction cost if the final construction cost is greater than $500,000.

D. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

E. Costs will be eligible for FHWA participation provided that the costs:

(1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;

(2) Are verifiable from INDOT's or the LPA's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;

(4) Are included in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

**II. Billings.**

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.

2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.

3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.

2. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C. of Attachment D.

**III. Repayment Provisions.**

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.

# UTILITY ACCOMMODATION POLICY

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# Approval and Implementation

The Indiana Department of Transportation's (INDOT) Utility Accommodation Policy (UAP) provides procedures pertaining to the accommodation and relocation of utility facilities in the right-of-way to Indiana's state highway systems.

The UAP addresses the applicability, procedural, and state and federal guidelines responsible for coordinating the relocation of utility facilities when the work is initiated by or incidental to a highway improvement project. The UAP will assist INDOT employees, local public agencies, utilities, contractors, and those that have property interest in INDOT improvement projects.

The Utilities Division provided subject matter expertise, accountability, and authority on policy as it relates to their divisions.

This plan is effective June 1st 2019

Heather Kennedy
Deputy Commissioner
Capital Program Management

Michael B. Jett
Director
Utilities and Railroad

Dimas Prasetya
Transportation Engineer, FHWA

# Record of Revision

| Date | Reviser | Description | Effective Date |
|---|---|---|---|
| Nov 11 2014 | JFG | Revised Appendix A:<br>All lines under or within 5 ft of pavement or structure now buried 4.0 ft<br>2. All lines not under or within 5 ft of pavement now buried 3.0 ft<br>3. All lines under ditches now buried 4.0 ft deep.<br>4. Revised the notes | Nov 11 2014 |
| June 12 2014 | JFG | Revised definition of:<br>1. Gas line, high pressure<br>2. Gas line, low pressure<br>3. Gas line, medium pressure<br>4. OSHA<br>Revised Gas Line, High Pressure:<br>1. Lines allowed for crossings now include 'fusion joined plastic lines'.<br>Revised Gas Line, Low Pressure & Medium Pressure:<br>1. 1. Lines allowed for crossings now include 'fusion joined plastic lines'. | June 12 2014 |
| Sept 2018 | SA/TL/BP/KCD | Updated version 4.0 | |
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# UTILITY ACCOMMODATION POLICY

## CHAPTER 1 INTRODUCTION

### 1.1 Purpose

INDOT's goal in managing the right-of-way is to preserve the integrity, safe operation, and function of the State highway system. The manner in which utilities occupy the right-of-way can affect the appearance, operation, construction, maintenance of the highway and the safety of the traveling public; therefore, any occupancy by a utility shall be authorized, and reasonably regulated and managed. The purpose of this Utility Accommodation Policy (UAP) is to establish the policy for managing utility facilities that are located, installed, maintained, repaired, removed, or relocated within the right-of-way of the State highway system. Refer to IC 8-1-9-2 and 105 IAC 13-2-7 for a list of utility facilities.

INDOT reserves the right to address other types of utility facilities in accordance with this policy or other policies

The UAP supersedes and replaces all previous policies or portions of policies pertaining to the accommodation of utility facilities in the right-of-way of the State highway system.

### 1.2 Prior Rights

The UAP is not intended to delineate whether or not prior rights exist. A utility with facilities on public right-of-way must relocate those facilities at their cost if they are in conflict with the proposed improvement project. A utility which has property interest will be accommodated via an Agreement, as allowed under state and federal law. Information regarding reimbursement of utility relocations can be found in IC 8-23-2-6(15), the INDOT Utility Coordination and Design Manual (UCDM) and the Federal Highway Administration Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects.
INDOT's authority with respect to jurisdiction over state highway right-of-way emanates from state and federal law.

### 1.3 Responsibilities

Federal and State law mandates that INDOT manage the State highway system responsibly, reasonably and cost effectively. Federal, state, and local statutes and implementing regulations establish authority for developing and maintaining the UAP. The following laws are the legal authority for this policy.

### 1.3.1 Federal Authority

a. 23 CFR 645 address issues related to reimbursements and compensations: https://www.ecfr.gov/cgi-bin/text-idx?SID=06ef07211d6c60404d337ce73d6f74a3&tpl=/ecfrbrowse/Title23/23cfr645_main_02.tpl

b. 23 U.S.C. deal specifically with utilities
   - 23 U.S.C. 109(l) addresses the accommodation of utilities on the right-of-way of federal-aid highways. https://www.fhwa.dot.gov/map21/docs/title23usc.pdf
   - 23 U.S.C. 123 addresses reimbursement for the relocation of utility facilities necessitated by the construction of a project on any federal- aid highway. https://www.fhwa.dot.gov/map21/docs/title23usc.pdf

### 1.3.2 State Authority

- Indiana Code Title 8 http://iga.in.gov/legislative/laws/2018/ic/titles/001
- 105 IAC Article 13 http://www.in.gov/legislative/iac/T01050/A00130.PDF

### 1.3.3. Other Requirements

The utility will comply with all other applicable requirements including but not limited to those specified in the following documents:

- INDOT Utility Coordination and Design Manual (UCDM)
- INDOT Standard Specification.
- INDOT Standard Drawings.
- INDOT Permit General and Special Provisions.
- *Indiana Manual on Uniform Traffic Control Devices* https://www.in.gov/dot/div/contracts/design/mutcd/2011rev3MUTCD.htm
- INDOT *Design Manual* including but not limited to, the following chapters.
  - Roadside Safety
  - Geometric Design of Existing Non-Freeways
  - Traffic Control Plans/Designs
  - Temporary Erosion and Sediment Control
- OSHA Standards.
- All other relevant industry standards for the type of facilities being installed.
- All other relevant laws and regulations.

# CHAPTER 2 PERMITS

## 2.1 Requirements and Process

A utility that desires to occupy the State highway right-of-way shall submit a permit request to INDOT. INDOT will review the permit request to ensure compliance with all requirements. A permit does not grant property interest. INDOT may deny any permit request that does not comply with this policy or other applicable requirements. INDOT may also deny a permit request if the utility has a history of non-compliance with regulations, rules, standards, policies or any other applicable requirements. If INDOT approves the request, a permit will be issued. The utility will be electronically notified if the permit request is denied.

The utility is responsible for obtaining any other applicable permits or authorizations required for the installation or relocation of its facilities. Recommended agencies to contact regarding other required permits include, but are not limited to, the U.S. Army Corps of Engineers, the Indiana Department of Natural Resources, the Indiana Department of Environmental Management, and local public agencies.

The utility will notify the INDOT office that issued the permit within one month of a facility ownership change. The new owner will have all the obligations and privileges granted to the former owner. The utility with a change in legal status remains bound by the permit and its provisions.

INDOT reserves the right to revoke any and all permits to do any work within the state right-of-way if the following utility accommodation provisions are not met. INDOT also reserves the right to request AS-BUILTS to verify the utility is within permitted location. Underground communication lines will refer to telephone and telegraph lines, not communications through Internet Protocol enabled services.

It is INDOT's intention that this policy is applied to all utility facilities, as described in this section and in IC 8-1-9-2 and 105 IAC 13-2-7, and the utilities that own or operate them in a nondiscriminatory manner and that all such utilities and utility facilities have equal access to, and are subject to equal requirements and regulations regarding, right-of-way owned, controlled, or managed by INDOT without regard to type of utility facility.

## 2.2 Permit Categories

Utility Initiated: A utility that desires to install or relocate any facility within the public right-of-way will present a permit application to the appropriate INDOT district office. The utility will submit a permit application through the Electronic Permitting System (EPS) http://www.ai.org/indot/2727.htm. Applicable fees and a permit bond may be required in accordance with INDOT policy governing the specific permit type sought.

INDOT Initiated**:** A utility required by INDOT to relocate any facility to accommodate a proposed highway improvement project will be approved by INDOT before relocating. No fees nor permit bond is required.

# CHAPTER 3 EXCEPTIONS

## 3.1 Policy

Deviations to this policy, either in whole, part, or otherwise not covered by, is considered an Exception. Exceptions to this policy may be allowed if due to extreme hardships or unusual conditions as long as the exception doesn't violate state and federal statutes.

INDOT will thoroughly and individually consider exceptions to the UAP on a case-by-case basis where it can be demonstrated that there are no reasonable and prudent alternatives to the strict compliance of this policy.

The INDOT Commissioner or its designated representative(s) has the authority to review and approve exceptions to this policy on a case by case situation. An approved exception will not set precedent for any subsequent request.

To obtain a UAP Exception a utility shall submit a permit request through EPS. Attach a justification document to the permit request, on company letter head, addressed to INDOT Utilities and Railroad Director.

## 3.2 Process

The justification document should describe the following:

- Identify the specific provision being addressed in the UAP and desired revision.
- Outline any unusual conditions or hardships.
- The impacts on traffic safety and highway operations.
- The impacts resulting from the alternative when the policy is followed and for the requested exception to the policy.
- How the facilities will be maintained and the impact on highway maintenance including drainage, pavement preservations, and possible highway improvements.

# CHAPTER 4 DRIVEWAY CONFLICTS

## 4.1 Driveways

Construction, reconstruction, modification or relocation of a driveway on highway right-of-way may require relocation of utility facilities. All work within state right-of-way is subject to INDOT approval.

## 4.2 INDOT Initiated

INDOT is responsible for coordinating the relocation of utility facilities when the work on the drive is initiated by or incidental to a highway improvement project. The division of costs for this work will be resolved between INDOT and the utility in accordance with state law.

## 4.3 Private Owner Initiated

The property owner is responsible for coordinating the relocation of utility facilities when the work on the drive is initiated by the private owner. The division of costs for this work will be resolved between the owner of the drive and the utility.

# CHAPTER 5 PRIVATE FACILITIES

INDOT does not allow private facilities to be located on public right-of-way unless they are private service lines which extend from the main line. The utility will request and coordinate the installation and relocation of any such utility service line.

# CHAPTER 6 SERVICE LINES

Generally, it is in the public interest for transverse installations of service lines owned by a public utility to be located on the State highway right-of-way because they connect the main line directly to the customer. INDOT may allow transverse installation of such service lines on state highway right-of-way in accordance with this policy. Also, INDOT reserves the right to permit installation of longitudinal runs of service lines when a public interest is demonstrated and approved in accordance with Chapter 3.1 of this policy. A utility that requires the property owner to install a service line will co-sign the permit. All work within state right-of-way is subject to INDOT approval.

# CHAPTER 7 ACCESS CONTROL

## 7.1 INDOT Authority

INDOT has the authority to control and regulate access to all highways under its jurisdiction. Access control is used to limit the degree of interference with vehicular traffic from other vehicles or pedestrians which are entering, exiting or crossing the highway.

The level of access control determines the type and extent of utility facility installations that are allowed on public right-of-way. The access control line may also be the same location as the right-of-way line. Contact the coordinating INDOT district for access control information for a specific location.

## 7.2 Three Access Control Categories

**Non-Limited Access**. INDOT regulates the locations and details of access, but INDOT has not purchased access control rights from adjoining properties. This access is common to most highways with frequent driveways and intersections.

**Partial Limited Access**. INDOT has declared or purchased access control rights from adjoining property owners. Access is controlled to give preference to vehicular traffic, but there may still be some intersecting streets at grade and some driveway connections. This access is common to many divided highways with some intersections and driveways.

**Full Limited Access**. INDOT has declared or purchased access control rights from adjoining property owners. Access is controlled to give priority to mainline vehicular traffic by providing access to other vehicles and pedestrians only from selected public roads, by prohibiting crossings at grade and by prohibiting driveway connections. This access is common to interstate highways and some divided highways.

# CHAPTER 8 GENERAL FACILITY LOCATION

Utilities will install and relocate facilities with due consideration for the safety, operation, maintenance and aesthetic characteristics of the highway and other users of the highway. Facilities shall be located to minimize relocation due to future highway improvements, to enable future installation of additional facilities on the highway, to enable facility maintenance, repair and upgrade with minimum hazards and minimum interference with highway traffic.

The location of above ground facilities within the highway right-of-way will be in accordance with the Roadside Safety Chapter of the INDOT *Design Manual*. New or relocated above ground facility installations will be located outside the clear zone.

Facilities will cross roadways at right angles or as nearly as practical to right angles. Reasonable latitude may be exercised for existing facilities which are otherwise qualified to remain in place. Where practical aerial lines should not cross

the roadway within 100 feet of a small structure, large culvert (over 48” diameter), or bridge structure to aid in future construction projects.

Subject to INDOT permit guidelines, facilities crossing limited and partial access highways will have all supporting structures and above ground appurtenances located outside the access control line and preferably, outside the right-of-way line. Additionally, subject to INDOT permit guidelines, access for installation, maintenance and relocation of facilities will be from outside the access control line and preferably, outside the right-of-way line of the limited access roadway.

Longitudinal installations of facilities, individual service connections and facility maintenance points will be located on a uniform alignment as near as possible to the right-of-way line to provide the maximum space for possible future highway construction or facility installations. Variance may be allowed on the distance from the facility to the right-of-way line in order to maintain a uniform alignment. Such variance often occurs where irregularly shaped portions of the right-of-way extend beyond the normal right-of-way limits. On highways with a frontage road, the preferred location for longitudinal installation is between the frontage road and the exterior right-of-way line.

Longitudinal installations of facilities, individual service connections and facility maintenance points on highways with partial access control are discouraged. Installations may be allowed where no other reasonable alternative exists. Factors to consider in evaluating the installation include terrain, cost, prior existence, environmental characteristics, and distance between distribution points. Other factors include access for maintenance from outside the access control line or from drive ways and the effect on agricultural land if not allowed.

Longitudinal installations of facilities on highways with full access control are not permitted. Exceptions may be issued when the facilities do not include individual service connections and the facilities are installed or serviced by direct access from outside the limited access control line.

Longitudinal installations of underground power lines, high pressure gas lines and petroleum lines will not be placed under travel lanes, shoulders or in the median. Longitudinal installations of all other types of facilities are discouraged from being placed under travel lanes, shoulders or in the median. On intersecting roadways, longitudinal installations under travel lanes, shoulders or in the median are discouraged where the road way crosses state right-of-way.

Utility facilities will not be installed on federally funded roadways within or adjacent to areas of scenic enhancement and natural beauty in accordance with 23 CFR, Part 645, Subpart B.

An existing utility facility within the right-of-way of an existing or proposed highway improvement project may remain provided it is in compliance with the INDOT UCDM and UAP or a UAP exception is approved. An existing utility facility that is in conflict with a proposed highway improvement project will be relocated in accordance with 105 IAC.

Locations that have a high potential to conflict with proposed construction, highway maintenance, roadway operations, highway safety or future highway improvements should be avoided. These include, but are not limited to, locations as follows:

- deep highway cut sections
- near footings of bridges or other highway structures
- diagonally across intersections
- cross-drains where flow of water, drift or stream bed load may be obstructed
- longitudinally in or under a ditch
- within a basin drained by a pump if the pipeline carries a liquid or liquefied gas
- within an underpass drained by a pump if the pipeline carries a liquid or liquefied gas
- wet or rocky terrain where minimum depth of cover would be difficult to attain;
- soft soils subject to excess settlement
- median installations

# CHAPTER 9 FACILITY DESIGN

Each utility is responsible for its facility design including the preparation of work plan narratives, drawings, cost estimates and specifications. The drawing will be of sufficient detail and scale to show the proposed facility relocation. The relocation drawing will be on INDOT plans, show stations, offsets and elevations of the utility facilities and comply with the other requirements listed in the UAP Appendix B.

Utility facility installations within the highway right-of-way will comply with current industry standards including but not limited to the following requirements.

- Electric power facilities and communication facilities will be in accordance with the current National Electrical Safety Code.
- Water facilities will be in accordance with the current specifications of the American Water Works Association (AWWA) and Ten State Standards for Water Design.
- Pressurized pipelines will be in accordance with the current ANSI Code for Pressure Piping (ASME Code B31) and 49 CFR Parts 192, 193 and 195.
- Liquid petroleum pipelines will be in accordance with the current recommended practice of the American Petroleum Institute for pipelines under railroads and highways.
- Pipelines carrying hazardous materials will be in accordance with the rules and regulations of the U.S. Department of Transportation governing the transportation of these materials.

- All facilities will be in accordance with Occupational Safety and Health Administration (OSHA).

Facility installations and relocations within the highway right-of-way will be of durable materials, designed for long life expectancy, and minimize routine maintenance.

Facility installations and relocations will be designed to accommodate planned expansion of the facilities. Facilities will be designed to enable facility maintenance, repair and upgrade with minimum interference and hazard to highway traffic and other utilities.

If an exception is granted and utility lines are attached to an appurtenance, bridge, small structure, culvert or other drainage structure, shut off valves will be installed at both ends of the attachment.

Utility facilities crossing state highways underground will be installed without disturbing the existing pavement structure or paved shoulders. Open cut of pavement will not be considered unless it is demonstrated there is no reasonable alternate method available. Casing, pipe, or conduit crossing state highway underground will be installed using trenchless technology in accordance with INDOT Standard Specification. Water jetting is not allowed.

Boring,jacking and directional drilling under state highways with access control will be from pits located at least 30 feet from the edge of pavement. Boring, jacking and directional drilling under state highways with no access control will be accomplished from pits located at least the total distance of 10 feet plus the depth of the pit without shoring. Wet boring or water jetting is not allowed. Boring, jacking and directional drilling under interstate highways will be from pits located outside the access control fence. Boring,jacking and directional drilling pits may be located closer than the required distance when they are protected in accordance with the INDOT *Design Manual*.

NOTE: INDOT reserves the right to use monitors for settling a bore over 6.0 inches in diameter.

NOTE: Monitors are not required for Directional Drilling because the bore mud will provide the support after it solidifies.

All trenchless underground installations of casings, pipes or conduits will be in accordance with the current INDOT Standard Specification or the utility industry standard, whichever is more stringent. The diameter of the auger will not exceed the outside diameter of the pulled pipe by more than one inch. Installations with a diameter of six inches or less may be accomplished by either jacking, guided whip auger or auger with the pulled pipe method. Open pits will be clearly marked, protected by barriers and secured from intrusion by pedestrians. Pits used for trenchless underground installations will be located in an area and constructed in

such a manner that will not affect highway structural footings or the highway. Shoring may be used to protect the highway.

To modify a permit, the utility must request and submit an addendum, along with a revised drawing to the District Permit Manager. The request will be presented to the designated utility coordinator for approval.

Utility tunnels will be designed so that most repairs or replacement of sections of pipe line can be made without pulling the entire pipe line. The utility tunnel design will include one or more entrance shafts of a size suitable for removal of one pipe section from the gallery. Utility tunnels will extend across the full width of the right-of-way.

Provided the design does not violate industry standards, INDOT encourages the installation of multiple utility facilities in the same duct or same trench to minimize the impact on the highway right-of-way and reduce installation costs. One utility may be selected as the lead for the project to complete the design and construction.

# CHAPTER 10 STRUCTURES

## 10.1 Utility Structures Construction Guidance

INDOT reserves the right to allow the construction of a bridge or tunnel to facilitate the placement of one or more utility facilities. The utility is responsible for and will pay the cost for design, construction, maintenance and any other costs associated with these structures. INDOT will participate in these costs to the extent that the utility is reimbursable for such work as the result of a highway project or to the extent that the structure is also used for highway purposes.

## 10.2 Highway Structures Guidance

Highway structures include bridges, small structures, culverts or other drainage pipes. INDOT does not allow facilities that supply hazardous, explosive, high voltage, high pressure or heated commodities to occupy or attach to highway structures. A Utility that desires to attach a facility to a highway structure will be considered an UAP Exception and will follow those procedures for approval and a proper permit.

Facilities that are allowed to attach to highway structures will comply with the following.

- Lines will not be attached to highway structures where they interfere with traffic, routine maintenance operations, the flow of water or degrade the appearance of the structure.

- Facilities will be carried in conduits or casings of sufficient strength to protect the line.

- INDOT may include conduits in the design of a bridge provided that:

    - The utility provides a written request providing the details of their requirements prior to the completion of the design of the highway improvement project.

    - The utility agrees to pay all additional costs associated with the design and construction to accommodate their requirements.

- The use of INDOT owned conduit is discouraged. If that the Utility may use INDOT owned conduit, there shall be written approval accompanied by an agreement. The Utility will be responsible for the cost and maintenance. The Utility will receive written approval to utilize INDOT owned conduit.

### 10.3 Structural Analysis

All requests to attach pipelines to an existing bridge must be accompanied by sufficient information including design details and calculations certified by a professional engineer to determine the effect of the added load on the structure. If the bridge does not have sufficient strength to carry the loads with an adequate margin of safety, the request will be denied. Where the request is to attach lines within or to a new structure, the utility will be responsible for any increase in the cost of the structure to support the extra loads of the pipeline, including any increase in the size or thickness of members necessary to contain lines or conduits installed within the structure.

Any time that an attachment must be relocated to accommodate highway work or safety, the utility must apply for a new attachment. Prior existence is not be a basis for reattachment.

## CHAPTER 11 UNDERGROUND LINES

All underground lines must meet applicable codes, industry standards, and the criteria below. INDOT reserves the right to revoke any and all permits to do any work within the state right-of-way if the following guidelines are not met. INDOT also reserves the right to request AS-BUILTS to verify the facilities are within permitted location.

### 11.1 Clearances

Vertical and horizontal clearances between a pipeline and a highway structure, other highway appurtenances or utility facilities should be sufficient to allow maintenance of the pipeline and the other items.

## 11.2 Depths

For the minimum depths of cover for underground lines as described herein, refer to Appendix A.

Existing lines may be allowed to remain in place with a reduction of 0.5 feet in the depths of cover specified above. Also, existing lines may remain in place with a lesser depth of cover if the pipeline is protected by a reinforced concrete slab which complies with the requirements listed below.

Width. The width will be three times the pipe diameter or encasement diameter whichever is greater but not less than 4.0 feet.

Thickness. The thickness will be a minimum of 6.0 inches.

Reinforcing. The minimum reinforcement will be No. 4 epoxy coated bars on 12.0 inch center, or the equivalent.

Cover. The cover will be at least six inches between the bottom of slab and top of pipe.

## 11.3 Location

Subject to INDOT permit guidelines, in urban areas, not including interstates, existing longitudinal lines may remain in place provided they comply with the following:

The lines can be maintained without violating access control.

The lines will not interfere with the proposed highway improvement project.

The lines are of sufficient strength and durability to withstand the changed conditions and have adequate remaining service life to prevent maintenance, repair or replacement.

Service access points are adjusted to be flush with the surface to accommodate any changes in grade.

Service access points are positioned to be out of the normal wheel path to accommodate any changes in traffic patterns and away from intersections.

The lines comply with all other requirements of this policy, as well as federal and state law.

## 11.4 Strength

All underground lines will provide sufficient strength to withstand internal design pressures. All underground lines will provide sufficient strength to withstand external design pressures including superimposed loads of soil, roadway, traffic, construction equipment, and other typical roadway pressures. All underground lines will be of satisfactory durability to withstand the conditions to which they may be subjected.

## 11.5 Crossings

Liquid petroleum and gas line crossings may be encased or non-encased. However, only welded steel lines with adequate corrosion protection may be used for non-encased highway crossings. Non-encased gas line crossings must be fusion joined plastic lines or plastic lines with no joints under or within 5.0 feet of the roadway. All water line crossings under the roadway and within 5.0 feet of the roadway must be encased, except service lines of 2.0 inches diameter or less. All sanitary line crossings under the roadway and within 5 feet of the roadway must be encased, except non-pressurized lines.

Communication lines crossing underneath highways do not require conduit. The use of a conduit or other suitable protection will be considered for communication lines located near footings of bridges, highway structures or other locations where the integrity of the line may be at risk.

Underground power lines shall be in a conduit. The use of a conduit or other suitable protection will be considered for power lines located near footings of bridges, highway structures or other locations that may be exposed to workers or the public.

## 11.6 Encasement and Conduit

Pipelines with encasements will consist of a pipe or other separate structure around and outside of the carrier line. Encasements may be metallic or nonmetallic. The encasement will be of sufficient strength to withstand external design pressures including superimposed loads of soil, roadway, traffic, construction equipment, and other typical roadway pressures. When used, encasement and conduits will extend under the median, from top of back slope to top of back slope for cut sections, 5.0 feet beyond the toe of slope under fill sections, 5.0 feet beyond the back of the curb, and 5.0 feet beyond any structure which the lines passes under or through. Encasement and conduits may be omitted under medians that are substantially wider than normal standards for such roadway, such as when the roadways are on independent alignments. All casings will be sealed at both ends.

## 11.7 Manholes, Vaults, Pits, and Hand Holes

Generally, manholes, vaults and pits are discouraged from being placed in the pavement, shoulders or curbs of any roadway. However, if they are permitted in the roadway, they should be installed outside the normal wheel path and away from intersections. In general these types of access points are limited to those necessary to install and service the lines. They will be placed directly in line with the facilities and of the minimum width to accomplish their intended function. They will be installed so the top of the facility is flush with the roadway or ground surface. They will have a solid no-grated line. They will provide sufficient strength to withstand external design pressures including superimposed loads of soil, roadway, traffic, construction equipment, and other typical roadway pressures. Manholes or structures beneath the roadway should be sealed in a way to prevent the inadvertent removal of subbase material.

# CHAPTER 12 ABOVE GROUND POWER, LIGHTING, AND COMMUNICATION LINES

## 12.1 Type of Construction

Longitudinal lines will be limited to single pole construction. Transverse lines will be limited to single pole construction or that type of construction used on the portion of the line adjacent to the highway right-of-way.

## 12.2 Vertical Clearances

The vertical clearance for overhead power and communication lines above the highway will be a minimum of 18 feet. If the overhead power and communication lines are at a signalized intersection where the signal is at 18 feet, then the overhead utility needs to be at a level to maintain a safe line of sight. The vertical clearance of overhead power lines and communication lines relative to a highway bridge or other highway structure will provide reasonable space for construction and maintenance activities.

## 12.3 Location

INDOT discourages the placement of towers on highway right-of-way. Light poles will be located in accordance with the Roadside Safety chapter of the INDOT *Design Manual*. Light poles will not be permitted in the ditch line of any state highway. Light poles in the clear zone will be breakaway design except at locations nearby sidewalks, shared-use paths, and other pedestrian facilities.

The number of guy wires placed within the right-of-way will be held to a minimum. Where possible, guy wires and guy poles placed inside the right-of-way will run

parallel to overhead power lines. Where possible, guy wires and guy poles that are not in line with the pole line will be placed outside of the right-of-way. Guy wires and guy poles may be placed in other locations but in no case will they be located within the specified clear zone.

Poles for longitudinal installations will not be allowed in the roadway median. Poles for transverse crossings may be allowed in the roadway medium where the cost of spanning an extreme width is excessive and where poles can be located in accordance with the other provisions of this policy.

Ground mounted appurtenances will be installed with a vegetation free area extending one foot beyond the appurtenance in all directions. The vegetation free area may be provided by an extension of the mounting pad, heavy duty plastic or similar material. The housing for ground mounted appurtenances will be an inconspicuous color.

# CHAPTER 13 FACILITY CONSTRUCTION

## 13.1 Preservation, Restoration, Cleanup, Drainage, and Envioronmental Permits

**Preservation.** The utility shall make every effort to minimize the areas disturbed by their work. The utility shall make reasonable efforts to minimize damage to crops and agricultural land. The utility is responsible for any cost of damage to crops or agricultural land.

**Restoration.** The utility shall restore in a timely manner areas disturbed by their own forces or their contractor to a condition equal to or better than the condition prior to work. Restoration of disturbed areas shall be in accordance with the requirements of the work plan, INDOT Standard Specifications and all provisions of the permit including; General Provisions, Special Provisions and any Additional Special Provisions.

**Cleanup. Spraying, Cutting and Trimming of Trees, Shrubs and/or Vegetation**. A permit will be required for the trimming, cutting, spraying or removal of trees, shrubs or other vegetation located within the highway right-of-way. INDOT will authorize any work completed in writing and will be in accordance with INDOT Standard Specification Earthwork.

**Drainage.** The utility will maintain existing drainage patterns during the installation, maintenance or removal of their facilities. Trenches and bore pits for underground facility installations will be backfilled in accordance with INDOT Standard Specifications. Outlets or under drains will be installed as needed to avoid entrapped water. Test holes will be back filled in accordance with INDOT specifications.

**Environmental Permits**. The utility will obtain all required environmental permits to support the installation or relocation of their facilities. The utility will implement erosion control, sediment control, and storm water management measures in accordance with 40 CFR Parts 9, 122, 123, & 124, 327, IAC 15-5 and the Indiana Storm Water Quality Manual. The utility will implement such measures to protect all areas disturbed by work performed by their own forces or work performed by their contractor. The utility will implement such measures during work operations and after work operations until replacement vegetation is established or until the area is disturbed by another party.

## 13.2 Safety and Convenience

**Control of Traffic.** Traffic control for utility construction and maintenance operations will conform to the Indiana Manual on Uniform Traffic Control Devices (IMUTCD) or the INDOT Work Zone Safety Handbook. All construction and maintenance operations will be planned with due consideration to the safety of the public and maintaining traffic mobility. Any such work must be planned to minimize closure of intersecting streets, road approaches, traffic lanes, or other access points. On high volume highways, construction operations interfering with traffic should not be allowed during periods of peak traffic flow. In accordance with the Traffic Control-Plan Design chapter of the INDOT *Design Manual,* a traffic control plan must be prepared and submitted with the permit application. INDOT reserves the right to inspect traffic control operations for compliance with established standards.

**Work Site Safety.** The utility will comply with the requirements of the IMUTCD. INDOT reserves the right to require utility construction or maintenance operations on state highway right-of-way to be discontinued during periods of inclement weather or when soil conditions are such that the utility work would result in extensive damage to the highway right-of-way or create an unsafe traveling condition.

**Maintenance and Repairs**. The utility will maintain all facilities in good repair both structurally and aesthetically. Maintenance of facilities crossing limited access highways will be from city streets, county roads, service roads, and approved openings provided in limited access right-of-way fences unless such alternatives are not practical. Maintenance and repair does not include the installation or relocation of facilities.

## 13.3 Trenches, Bedding, and Backfill

The essential features for trench construction are restoration of the structural integrity of roadbed after trenching; security of the pipe against deformation likely to cause leakage; and assurance against the trench becoming a drainage channel. The integrity of the pavement structure, shoulders and embankment are of primary concern.

Trenches, bedding and backfill will be in accordance with the INDOT Standard Specification and as follows:

- The width of a trench will be the minimum necessary to accomplish the installation. Shoring will be used when necessary, in accordance with OSHA requirements.

- Bedding will be provided to a depth of 6.0 inches or half the nominal diameter of the pipe, duct, or duct bank, whichever is less. Bedding consists of pit run sand and gravel mixture or other suitable materials approved by the permit inspector in accordance with INDOT Standard Specification. Bedding will not be required for pipes, ducts or duct banks encased in concrete or flowable fill. The bottom of the trench will be prepared to provide the pipe, duct or duct bank with uniform bedding support throughout the length of the installation.

## 13.4 Underground Facilities Protection

Indiana 811 is the agency that coordinates the protection of underground utility facilities in accordance with IC 8-1-26. Contact will be made with Indiana 811 two days prior to any excavation or survey so that underground facilities may be located and marked.

The location of each underground utility will be marked by the utility with paint, flags or other temporary surface markings color coded for each utility type. The uniform color code system is as follows:

a. Red: Electric power lines or conduits.
b. Yellow: Gas, petroleum, steam or other hazardous materials.
c. Orange: All types of communication lines.
d. Blue: Water systems and slurry pipelines.
e. Green: Storm and sanitary sewers.
f. Purple. Reclaimed water.
g. Pink. Temporary survey markings
h. White. Proposed construction.

An underground utility line, which lacks a continuous and integral metallic component capable of detection by locating instruments, will be accompanied in its location by a continuous detectable material such as a metallic tracer wire or metallic tape. This includes service lines.
A utility will place a warning device directly above high risk facilities such as gas and petroleum lines. A utility may install a warning device above other facilities. Warning devices will be buried at least 12 inches below the ground surface and indicate they are in close proximity to a buried facility as industry standards require.

The utility will place a readily identifiable and suitable marker(s) or sign immediately above any facility and where it crosses the right-of-way line, except where there is a vent. The markers or signs will be placed within close proximity to

the facility. The markers indicate the facility type and facility contact information. Markers and signs will be:

INDOT approved
Break-away and crashworthy
Placed at the right-of-way in transverse crossings

## 13.5 Pavement Cuts

Open cutting of pavement on interstate highways is not allowed. Open cutting of pavement on all other highways is highly discouraged because it adversely affects the integrity of the pavement and may disrupt the flow of traffic. A utility that desires to install a facility by open cut will obtain a "right-of-way occupancy permit" from the appropriate INDOT District prior to starting the work. The permit request will explain the reasons why the utility desires to install their facilities by open cut. At the conclusion of the work, all cuts in the pavement will be repaired with like materials, to a similar or greater depth and to a condition equal to or better than the condition of the pavement prior to the work in accordance with INDOT Standard Specification. INDOT will inspect all pavement cuts in the roadway to determine the extent of pavement repairs. The utility shall contact INDOT no later than 30 days following the pavement cut to allow for a timely inspection. The utility will submit their pavement design for the repair of the pavement when the permit is requested. The design for pavement repairs will be approved prior to a permit being issued.

## 13.6 Road Closures

A utility that requires a road closure to install, service or relocate their facility will obtain a permit prior to starting their work. The utility will coordinate with the District Permit Engineer to determine an acceptable plan to address impacts to school busses and emergency vehicles including but not limited to ambulances, fire and law enforcement. The utility will provide notice of the location and schedule for the proposed road closure to all impacted state and local agencies including but not limited to schools, hospitals, fire departments and law enforcement offices at least three months prior to the date of the planned road closure.

## 13.7 Emergency Repairs

Emergency repairs may be performed within the right-of-way when physical conditions or time constraints prevent applying for and obtaining a permit. The utility will notify the District Permit Manager or INDOT Traffic Management Center as soon as possible about its plan of action for the emergency repairs prior to beginning any work within the right-of-way. The utility will make arrangements for the control and protection of traffic or pedestrians affected by the proposed operations. The utility will submit a permit application within five working days of the work to cover the emergency repairs.

## 13.8 Inactive Facilities

Inactive facilities fall into two categories.

**Out of Service Facilities**. Facilities that are no longer in use and will be restored to service.

**Retired/Abandoned in Place Facilities**. Facilities that are no longer in use and will not be restored to service.

Inactive facilities remain the responsibility of the utility until such are removed from the State highway right-of-way. INDOT does not allow a utility to absolve themselves of accountability and responsibility for their facilities. An inactive facility remains the responsibility and property of the utility owner, regardless if the facility is retired or abandoned or if the utility has subordinated its property interest. The utility will maintain accurate, complete and understandable records of all inactive facilities.

The utility will remove all above ground inactive facilities within sixty calendar days of the facility becoming inactive.

INDOT prefers that underground facilities that are out of service be removed from the right-of-way when reasonable. The utility will remove underground out of service facilities that may impair the safety or integrity of the highway or adversely impact the environment. The utility may remove underground out of service facilities provided that such removal does not impair the safety or integrity of the highway or adversely impact the environment.

A utility may leave retired in place pipes of any material that are 12.0 inch or less in diameter provided the ends are sealed. A utility may leave retired in place pipes of greater than 12.0 inches in diameter provided they are filled with flowable fill or grout with the ends are sealed. The flowable fill or grout material will be in accordance with INDOT Standard Specification.

A utility is responsible to remove inactive facilities that are found to be in conflict with a highway improvement project. The utility is responsible for the cost to remove these facilities unless the work is reimbursable. The utility may consider alternate methods of removal such as having the work included in the state highway construction contract.

## 13.9 Inspections

INDOT reserves the right to inspect all utility installations within highway right-of-way. If any violations or deficiencies are observed, INDOT will provide notice of such violations or deficiencies to the utility. The utility will establish with INDOT a reasonable timeframe for corrective action if such is necessary. The cost of subsequent inspections may be charged to the utility.

## 13.10 Records

INDOT reserves the right to request information from the utility to help minimize relocation efforts. The utility will adequately protect and maintain records and documents of its facilities located in public right-of-way. Records will cover active facilities and inactive facilities. Records will include the facility type, function, size, configuration, material, location, elevation and any special features such as encasement, manholes and valves. Records will include all service lines which enter or cross the highway right-of-way. The utility will provide complete, concise, and accurate copies of these records at no cost within 30 days of a request.

# CHAPTER 14 IRRIGATION AND DRAINAGE PIPES, DITCHES AND CANALS

Irrigation and drainage pipes crossing state right-of-way may be permitted. Irrigation and drainage pipes installed across any highway right-of-way must be designed, constructed and maintained in accordance with INDOT standards for culverts and bridges.

Ditches and canals may be permitted on state right-of-way if they comply with the clear zone requirements of the INDOT *Design Manual*

# CHAPTER 15 BROADBAND FACILITIES

Note: Broadband facilities are not included in the Utility Accommodation Policy. Broadband facilities are to be coordinated in reference to the Broadband facilities are to be coordinated in reference to the Broadband Access Permit Guidance document that can be found at the following link: http://www.in.gov/indot/2727.htm

INDOT reserves the right to revoke any and all permits to do any work within the state right-of-way if the following Broadband Permit Guidelines are not met. INDOT also reserves the right to request AS-BUILTS to verify the fiber is within permitted location.

# CHAPTER 16 MAINTENANCE AND REVIEW

The Utilities and Railroad Division, in cooperation with INDOT districts and other applicable divisions, will oversee all maintenance of the UAP. The Utilities and Railroad Division will review the UAP every 12-24 months and provide updates as needed.

# GLOSSARY

The following definitions apply to INDOT's utility accommodation:

ANSI. American National Standards Institute. https://www.ansi.org/

Access Control. The regulation of public access to and from properties abutting the highway facilities. The three basic types are non-limited access, partial limited access and full limited access.

Applicant. An applicant is a person or entity applying for a permit under this policy.

Appurtenances: a physical component of a utility or road system instrumental to the operation of the system.

Backfill. Replacement of excavation with suitable material compacted as specified.

Bedding. Soil or other suitable material used to support an underground facility.

Bonding. A method to help ensure that the job a contractor or utility has been hired to do is performed satisfactorily and that the state is protected against losses from theft or damage done by the utility or contractor.

CFR. Code of Federal Regulations. https://www.ecfr.gov/cgi-bin/ECFR?page=browse

Boring. Boring is the process of making a hole below the ground by drilling.

Carrier. A carrier is a pipe directly enclosing a transmitted fluid; liquid, gas or slurry.

Casing. A casing is a pipe enclosing a carrier.

Clear Zone. The clear zone is the portion of the road side within the highway right-of-way that is free of non-traversable hazards and fixed objects. The INDOT *Design Manual* is the guide for establishing the clear zone for various types of highways and operating conditions.

Conduit. A conduit is a pipe that encloses a communication or electrical line.

Depth of Cover. Depth of cover is the distance between the top of an underground facility including casing to the surface of the ground or pavement. (The INDOT design manual references depth of cover from top of pipe to bottom of pavement. The utilities should be told the depth of pavement at each conflict in order for them to understand clearances and true depth of cover.)

District. A district is one of the six administrative subdivisions of INDOT.

Distribution Point. A distribution point is a location on a main line where a connection is made to serve one or more customers.

Divided Highway. A divided highway is a highway with separated roadways for traffic in opposite directions.

Electronic Permitting System (EPS). The electronic online system used to record activity related to an INDOT permit including plan submittals, correspondence and payment activity.

FHWA. Federal Highway Administration https://www.fhwa.dot.gov/reports/utilguid/

Facility. Any privately, municipally, publicly or cooperatively owned systems for supplying: communication, power, light, heat, electricity, gas, water, pipeline, sewer, sewage disposal, drain or like services directly or indirectly to the public. Facilities do not include plant type components such as solar arrays, wind turbines and oil wells that produce commodities.

Facility relocation Any activity involving a facility that is needed for a roadway improvement project including, but not limited to, abandoning, altering, deactivating, installing, maintaining, modifying, moving, removing, or supporting.

Highway. Highway, street, or road means a public way for purposes of vehicular traffic, including the entire area within the right-of-way.

Frontage Road. A frontage road is a local street or road auxiliary to and located along side of a highway used for access control, and to provide service to adjacent areas.

Gas Line, High Pressure. A pipeline that supplies natural gas with an internal pressure greater than 60 psi.

Gas Line, Low Pressure. A pipeline that supplies natural gas with internal pressure less than or equal to 60 psi.

Gas Line, Medium Pressure. A pipeline that supplies natural gas with internal pressure less than or equal to 60 psi.

IMUTCD. Indiana Manual on Uniform Traffic Control Devices.
https://www.in.gov/dot/div/contracts/design/mutcd/2011rev3MUTCD.htm

INDOT. Indiana Department of Transportation. www.in.gov/indot

Limited Access Highway. A highway or street designed for through traffic, over, from, or to which owners or occupiers of abutting land or other persons have either no right or easement, or a limited right or easement of direct access, light, air or view because their property abuts upon the limited access facility or for any other reason. The highways or streets may be parkways from which trucks, buses, or other commercial vehicles are excluded, or freeways open to use by all customary forms of highway or street traffic.

Manhole. A manhole is an opening in an underground system where a worker(s) may enter for the purpose of working on the facilities.

Median. A median is the portion of a divided highway separating the traveled way for traffic in opposite directions.

Manual on Uniform Traffic Control Devices (Federal) https://mutcd.fhwa.dot.gov/
NESC. National Electric Safety Code. http://standards.ieee.org/about/nesc/

Notice to Proceed (NTP). Formal notification by INDOT to a utility to proceed with installation or relocation of their facilities on public right-of-way.

OSHA. Occupational Safety and Health Administration. https://www.osha.gov/
Occupancy. The presence of utility facilities within highway right-of-way.

Pavement Structure. The combination of the sub-base, base course and surface course placed on a sub-grade to support the traffic load and distribute it to the road bed.

Permit. Written formal acceptance by INDOT of the utility's plan to construct, maintain repair or remove their facilities on public right-of-way.

Pipeline. A continuous carrier used primarily for the transportation of fluids (liquid, gas or slurry) from one point to another using either gravity or pressure flow.

Plowing. Direct burial of utility lines by means of a plow type mechanism which breaks the ground, places the utility line, and closes the break in the ground in a single operation.

Private Line. Privately owned facility devoted exclusively to serve the owner of those facilities.

Right-of-Way. A general term denoting land, property, or interest therein usually in a strip, acquired for or devoted to transportation purposes.

Road. A public way for purposes of vehicular traffic, including the entire area within the right-of-way.

Roadway. The paved portion of the highway used by vehicular traffic and includes the shoulders.

Roadside. The area abutting the roadway within the right-of-way. Roadside includes areas between roadways of a divided highway.

Service Line. A facility that supplies a service to an individual customer from a main line.

Shoulder. The portion of the roadway adjacent to the traveled way for the accommodation of stopped vehicles, emergency use, and lateral support of the pavement structure.

State Highway System. Encompasses all highways under state jurisdiction including interstates, US routes, and state routes. This system includes local roads or state park roads when an improvement project is under state administration.

Structure. A functional unit including the foundation thereof for which the component parts and the method of assembly or construction were determined by the laws of structure mechanics to support predetermined loads.

Sub-grade. The prepared earth surface upon which the pavement structure and shoulders are constructed.

Traffic Control Plan. Describes the traffic control devices and other measures that will be used to promote the safe and controlled movement of vehicular traffic around the worksite and the safety of the utility work force.

Transverse Installation. Extending across or in a cross direction (not parallel).

Traveled way. That portion of the roadway for the movement of vehicles excluding shoulders and auxiliary lanes.

Trenchless Technology. A group of construction methods for underground facility installation, replacement, renovation, inspection, location, and leak detection, with minimum excavation from the ground surface.

UCDM. Utility Coordination and Design Manual (UCDM)

Utility. The owner of a facility.

Vent. A pipe to allow the dissipation of gases or vapors into the atmosphere from an underground casing.

# Appendix A: Minimum Depth of Cover for Utility Lines

| Minimum Depth of Cover for Utility Lines (Feet) | Under or within 5 feet of pavement or structure(1) | Not under or within 5 feet of pavement or structure | Under ditches |
|---|---|---|---|
| | | | |
| Liquid Petroleum Lines Encased | 4.0 | 3.0 | 4.0 |
| Liquid Petroleum Lines Not Encased | 4.0 | 3.0 | 4.0 |
| High Pressure Gas Lines Encased | 4.0 | 3.0 | 4.0 |
| High Pressure Gas Lines Not Encased | 4.0 | 3.0 | 4.0 |
| Medium & Low Pressure Gas Lines Encased | 4.0 | 3.0 | 4.0 |
| Medium & Low Pressure Gas Lines Not Encased | 4.0 | 3.0 | 4.0 |
| Water Lines(2) | 4.0 | 3.0 | 4.0 |
| Sanitary Lines | 4.0 | 3.0 | 4.0 |
| | | | |
| Underground Power Lines Encased | 4.0 | 3.0 | 4.0 |
| Underground Power Lines Not Encased | 4.0 | 3.0 | 4.0 |
| Underground Communication Lines Encased | 4.0 | 3.0 | 4.0 |
| Underground Communication Lines Not Encased | 4.0 | 3.0 | 4.0 |
| | | | |
| Notes | | | |
| (1) Minimum 2.0 ft below structure or improvement | | | |
| (2) Dependent on Ten State Standards and IDEM | | | |

# Appendix B: Requirements for Drawings of Sufficient Detail

1. Overlay the utility relocations on each INDOT plan and profile sheet and on each cross section utilizing INDOT stationing, offsets and elevations. This applies to poles, aerial and underground lateral crossings and underground facilities that are parallel to the INDOT right-of-way.
2. Label the type of utility facility such as high pressure gas, fiber optics etc.
3. Include a legend for utility facility symbols.
4. Provide a cross section detail of each duct bank and vault.
5. Overlay the utility relocations on temporary right-of-way drawings or runaround drawings such as those used for the construction of bridges, drainage structures, or for the removal of structures.
6. Show the clearances over pavement for proposed overhead crossing lines on the cross sections.
7. Label the station and offset of each utility pole.
8. Dimension each pole foundation giving depth, width, length or diameter.
9. Label each guy offset for the attached pole and depth of the anchor.
10. Label the stationing of each underground crossing.
11. Label the maximum and /or minimum elevation of each underground facility where it crosses under existing or proposed pavement or ditch. Note that the maximum elevation is to be measured from the top of the pipe and the minimum elevation is to be measured from the bottom of the pipe. If it adds clarity, you may add arrows that show the limits of the set elevations. It may be useful to add a note to the drawing stating, " from Station XXX+XX to Station YYY+YY, the top of the line will not be higher than AAA.AA," or you may state "at Station XXX+XX from 50.0 feet left to 20.0 feet right the top of the line will not be higher than AAA.AA."
12. Label the maximum or minimum elevation of each underground facility where it crosses a drainage structure or another utility.
13. Label the underground utilities as proposed, existing to remain or existing to be removed.
14. Label above and underground appurtenances such as control boxes, climate control units, vaults and hand holes and give the size of each.
15. Label poles and other above ground appurtenances as proposed, existing to remain or existing to be removed.
16. "X" out facilities to be removed from service.
17. Label the offset from the centerline or the distance from proposed right-of-way of each underground utility that is roughly parallel to the centerline especially at change points.
18. Note whether a utility facility is a transmission or distribution utility facility.
19. Note the method of installation of underground utility facilities such as bore or direct bury.
20. Note the material of underground utility facilities.
21. Note which manhole covers will need to be adjusted to grade per the work plan narrative. Note utility contact info for the adjustment of manhole covers.
22. Note which out of service pipes are to be filled with cellular grout.
23. Note that utility facilities being installed in contaminated soil will be bored and will use suitable pipe material when no provisions have made to remove the contaminated soil.
24. Provide any bore pit location and size.
25. Note where nonmetallic lines have metal tracing wires.
26. Identify pipes made with asbestos or made with an asbestos casing.
27. Identify the location of the utility facility's easements.

END OF DOCUMENT

**Indiana Department of Transportation**
100 North Senate Avenue, Room N755
Indianapolis, IN 46204
**www.in.gov/indot**

**EXHIBIT F**

October 5, 2020

**Via Electronic Mail and U.S. Mail**

Indiana Department of Transportation
Attention: Travis Underhill
100 North Senate Avenue, IGCN 755
Indianapolis, Indiana 46204

Re: Local Public Agency Project Coordination Contracts with the City of Carmel
EDS # A249-15-L140020, Des. No. 1383180
EDS # A249-15-L150078, Des. No. 1401703

Dear _____,

The City of Carmel ("Carmel") and the Indiana Department of Transportation ("INDOT") are parties to two Local Public Agency Project Coordination Contracts entered into in 2015 regarding Carmel's Guilford Rd. road construction project (EDS # A249-15-L140020) and Carmel's 126th Street Bike/Pedestrian project (EDS # A249-15-L150078) (the "Projects"). Copies of the contracts are included with this letter. It is Carmel's understanding that work plans for utility relocation of Duke Energy Indiana's ("Duke") facilities located in the Projects' right-of-way were submitted, but no final agreement was reached for reimbursement for the relocation of Duke's utility facilities required under these Projects. It is Carmel's understanding that INDOT has deferred responsibility for utility relocation to Carmel and the dispute over reimbursement is left for Carmel and Duke to resolve. Carmel and Duke have entered into a utility relocation agreement which provides a method for resolving disputes for the relocation of Duke's utility facilities. If Carmel's understanding that INDOT has deferred responsibility for relocation of Duke's facilities is correct, Carmel requests that INDOT acknowledge this understanding by signing this letter as indicated below. If you have any questions or would like to discuss, you may contact me by email at jkashman@carmel.in.gov or by phone at 317-571-2441.

Sincerely,

Jeremy Kashman, PE
City of Carmel

Cc: Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

Indiana Department of Transportation

By: Travis J. Underhill

Title: Deputy Commissioner

Date: 10-7-2020

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY**

**PROJECT COORDINATION CONTRACT**

**EDS #: A249-15-L150078**
**Des. No.: 1401703**
**CFDA No.: 20.205**


This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Carmel**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

## NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. Notices to INDOT regarding project management shall be sent to respective District Office:

**Greenfield District Office**
**31 South Broadway**
**Greenfield, Indiana 46140**

C. Notices to the LPA shall be sent to:

**City of Carmel**
**One Civic Square**
**Carmel, Indiana 46032**

## RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" and "Notice to PARTIES" above are hereby made an integral part and specifically incorporated into this Contract.

**SECTION I PROJECT DESCRIPTION.** INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

**SECTION II LPA RESPONSIBILITIES.** The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

**SECTION III INDOT RESPONSIBILITIES.** INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

**SECTION IV PROJECT FUNDS.** INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

**SECTION V TERM AND SCHEDULE.**

A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract) between **July 1, 2018 and June 30, 2019**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.

B. In the event that federal funds for the Project are not obligated during the period listed in section V.A., the federal funds allocated to the Project will lapse.

**SECTION VI GENERAL PROVISIONS**

A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

B. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

C. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the LPA's fiscal year. The LPA agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the LPA is not out of compliance with the financial aspects of this Contract.

D. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.

3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

**E. Compliance with Laws.**

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.

2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.

3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."

4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<http://www.in.gov/ethics/>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4 and under any other applicable State or Federal laws.

5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.

6. As required by I.C. 5-22-3-7:

   (1) The LPA and any officials of the LPA certify that:
      (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
         (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
         (ii) IC §24-5-12 [Telephone Solicitations]; or
         (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
      (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

   (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,

      (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

      (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

**F.** **Disadvantaged Business Enterprise Program.** Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

> The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

**G.** **Disputes.**

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.

3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

H. **Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of $25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2)

notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

I. **Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

J. **Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

K. **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.

L. **Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees , individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

(a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

(b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

(c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or

(d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

**M.** **Merger & Modification**. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

**N.** **No Investment in Iran**. As required by IC 5-22-16.5, the LPA certifies that the LPA is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.

**O.** **Non-Discrimination**.

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under 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, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least $50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

   It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

   a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

   b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

   c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.

   d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

   e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.

   f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means

of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

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

Q. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

R. **Pollution Control Requirements.** If this Contract is for $100,000 or more, the LPA:

1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and

3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.

S. **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

T. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

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

**Non-Collusion**

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

**LPA: City of Carmel**

James Brainard, Presiding Officer
Print or type name and title

Signature and date 6-17-15

Mary Ann Burke, Member
Print or type name and title

Signature and date

Lori S. Watson, Member
Print or type name and title

Signature and date 6/17/15

DUNS#: 087033320

Attest

Auditor or Clerk Treasurer

Diana Cordray, IMCA, Clerk-Treasurer

Sandra M Johnson
Deputy Clerk For

This instrument prepared by:
Ellen Hite
May 13, 2015

**STATE OF INDIANA**
**Department of Transportation**

**Recommended for approval by:**

Robert D. Cales, Director
Contract Administration Division

Date: 7/9/2015

**Executed by:**

Deputy Commissioner (FOR)
Brandye Hendrickson, Commissioner

Date: 7/14/2015

**Department of Administration**

Jessica Robertson, Commissioner

Date: 7/10/15

**State Budget Agency**

Brian E. Bailey, Director

Date: 7-22-15

**Approved as to Form and Legality:**

Donald Hannah (FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: 7.28.15

# ATTACHMENT A

## PROJECT DESCRIPTION

Des. No.: **1401703**

Program: **Group I**

Type of Project: **Bike/Pedestrian Facilities**

Location: **North side of 126th St**

A general scope/description of the Project is as follows:

**A project for bike/pedestrian facilities for the north side of 126th Street from Keystone Avenue to Hazel Dell Parkway path project, in the City of Carmel, Hamilton County, Indiana.**

## ATTACHMENT B

## LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/div/contracts/standards/dm.html) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See http://www.in.gov/indot/7287.htm.). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See http://www.in.gov/indot/3018.htm).

2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure.

3. REQUIREMENTS FOR ADDITIONAL CONTRACTS

   A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:

      1. use the "LPA-CONSULTANT Agreement", which is found at http://www.in.gov/indot/div/projects/LPASection/ and is incorporated by reference; or

      2. use a form of agreement that has been reviewed and approved by INDOT.

4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.

5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.

6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.

8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.

9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.

11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.

    A. If project inspection will be provided by full-time LPA employees:
    The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

    or

    B. If project inspection will be provided by the LPA's consultant:
    INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.

13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See http://www.in.gov/indot/2376.htm). The LPA shall execute written use and occupancy contracts as defined in this Policy.

14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:

    a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.

    b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:

        1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.

        2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.

        3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.

    c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:

        1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.

        2. INDOT may elect to pay its obligations under the provisions of the construction contract.

        3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.

d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.

e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

# ATTACHMENT C

## INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.

2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.

3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.

4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.

5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.

6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.

7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.

8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.

9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.

10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.

11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

**ATTACHMENT D**

**PROJECT FUNDS**

**I. Project Costs.**

A. If the Program shown on Attachment A is receiving **Group I** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80%** of the eligible Project costs. The maximum amount of federal-aid
X funds allocated to the Project is $ **1,423,200.00**.

OR

B. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____ % of the eligible Project costs. The maximum amount of federal
____ funds allocated to the project is $ _____.

C. The LPA understands and agrees that in accordance with I.C. 8-23-2-14, federal reimbursement for construction inspection and testing construction materials, after INDOT retains 2.5% of the final construction costs for oversight, is limited to:

(1) 14.5% of the final construction cost if the final construction cost is less than or equal to $500,000; or

(2) 12.5% of the final construction cost if the final construction cost is greater than $500,000.

D. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

E. Costs will be eligible for FHWA participation provided that the costs:

(1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;

(2) Are verifiable from INDOT's or the LPA's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;

(4) Are included in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

**II. Billings.**

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.

2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.

3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.

2. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C. of Attachment D.

**III. Repayment Provisions.**

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.

# PROVISIONAL UTILITY RELOCATION COST PAYMENT AGREEMENT

This Provisional Utility Relocation Cost Payment Agreement ("PURCPA") is entered by and between the City of Carmel, Indiana ("Carmel") and Duke Energy Indiana, LLC ("DEI"), (collectively the "Parties"), and is effective on and after the due date of its execution by the last Party to sign the PURCPA.

**WHEREAS**, the Parties disagree about the relationship between and the application of certain provisions of Carmel City Code, Indiana Code § 8-1-2-101 *et. seq.*, and DEI's General Electric Tariff, General Terms and Conditions, including Section 9, as those may relate to the responsibility for costs associated with relocating certain DEI facilities to accommodate the Carmel Projects defined below; and

**WHEREAS**, assuming a safe, reasonable alternate location, DEI recognizes its obligation to pay for and relocate DEI facilities presently in Carmel public road Right of Way ("ROW") on a like-for-like basis, if Carmel requests the relocation for a Carmel road improvement project ("Road Improvement Projects"); and

**WHEREAS**, DEI contends that under applicable state law and regulations and in moving facilities for Carmel Road Improvement Projects, it is only obligated to pay to relocate above-ground facilities to above-ground facilities and that Carmel is responsible for any cost differential to relocate DEI facilities from above-ground facilities to underground facilities; and

WHEREAS, Carmel contends that DEI must abide by applicable laws including state laws and statutes and Carmel ordinances and regulations and pay the cost differential in moving above-ground facilities to underground facilities for Road Improvement Projects where such state laws and statutes and Carmel ordinances and regulations provide for underground relocation; and

**WHEREAS**, the Parties dispute whether DEI is obligated to pay anything to relocate DEI facilities in Carmel-owned ROWs at Carmel's request, for multi-use projects and non-road improvement projects (collectively" Multi-Use Projects"); and

**WHEREAS**, the Parties wish to move forward on the Carmel Projects on the terms set forth herein and to defer resolution of their issues to a later time;

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING** and for other valuable consideration, the receipt and sufficiency of which is acknowledged by each of them, the Parties agree as follows:

**SECTION 1: CARMEL PROJECTS DEFINED**

This PURCPA applies to the listed projects in this Section ("Carmel Projects"), which list may be amended from time to time by letter agreement signed by both Parties. The Parties agree that while each project is separate and distinct, the projects can generally be classified as follows:

A. Road Improvement Projects that involve a cost differential to move DEI facilities from above-ground to underground:

1. Guilford Road Improvement Project – Relocate overhead electric facilities in current ROW to underground electric facilities from Guilford Road from 126th Street, North to Main Street (131st Street);
2. Rangeline Road Improvement Project – Relocate overhead electric facilities in current ROW to underground electric facilities from 136th Street, North to US 31 Overpass (includes DEI's request that Carmel enter an evergreen provision);

3. AAAWay at 116th Street Road Reconstruction: Relocate overhead DEI electric facilities in current ROW to underground electric facilities for a new Roundabout;

4. Rangeline Road and 116th Street Road Reconstruction: Relocate overhead DEI electric facilities in current ROW to underground electric facilities for a new Roundabout.

B. Multi-Use Projects:

1. Carmel Drive Multi-Use Project: Relocate underground DEI electric facilities in current ROW deeper below grade from Adam Street, West to Old Meridian Street;

2. 126th Street Multi-Use Project: DEI utility pole above-ground relocation and down guy-wire adjustments;

3. Main Street and Keystone Multi-Use Connection Project: DEI utility pole above-ground relocation and down guy-wire adjustments.

4. 136th Street Multi-Use Path between Rangeline Road and Keystone: DEI underground electric facilities in current ROW to be buried deeper from 048-464 to 069-949 and relocate three poles which will require 2 new poles and other supporting facilities.

5. Gray Road Multi-Use Project between 136th and 146th Streets: DEI Utility pole above-ground relocation and down guy-wire adjustments.

**SECTION 2: TERMS OF PURCPA**

A. Carmel shall execute a separate Utility Reimbursement Agreement ("URA"), in a form attached as Exhibit A, and a Work Plan for each Carmel Project prior to DEI

commencing work for that project. Each proposed URA shall include a DEI cost estimate for the Project's Disputed Costs. "Disputed Costs" means for Road Improvement Projects the cost differential that results from relocating electric facilities in current Carmel road ROW from above-ground to underground. "Disputed Costs" means for Multi-Use Projects the entire costs of the project relocation.

B. Approval of the URA by the Carmel Board of Public Works and Safety shall serve as written notice-as set forth in Section 4 herein to DEI of Carmel's intent to proceed with that Carmel Project and shall trigger the obligations set forth below.

C. Within thirty (30) days of the effective date of the URA for a Carmel Project, Carmel shall make an initial payment to DEI of 50% of the estimated Disputed Costs for such Carmel Project ("Initial Payment").

D. Within thirty (30) days of receipt of the Initial Payment, DEI shall provide Carmel written notice, by email or otherwise, that it has Commenced Work. DEI shall be deemed to have commenced work when DEI begins the design work or other preliminary work necessary to relocate DEI facilities.

E. Within One Hundred and Eighty (180) days after DEI provides written notice to Carmel that it has Commenced Work, Carmel shall make payment of the remaining 50% of the estimated Disputed Costs for the Carmel Project ("Remaining Payment"), noting on the invoice whether Carmel has initiated a lawsuit/or proceeding on that project, as set forth below. If Carmel has initiated suit or other proceeding against DEI in a court of law or at the IURC, whichever is applicable, to obtain a determination as to which Party shall pay the Disputed

Costs, the Remaining Payment must be paid into a court-approved account or a previously agreed upon account. If Carmel does not file a suit or other proceeding against DEI within ninety (90) days after the Initial Payment is made by Carmel ("Time Limit"), Carmel waives its right to do so with respect to all the Disputed Costs for that Carmel Project only, and shall pay all actual costs to DEI as Remaining Costs for that Carmel Project. Nothing herein waives or alters either Party's right to file a suit or proceeding relating to any other Carmel Project for which the Time Limit has not expired. Carmel's failure to file suit as to one Carmel Project, as set forth above, shall not be a waiver of its right to challenge any Disputed Costs relating to any remaining Carmel Projects for which the Time Limit has not expired nor shall it be deemed an admission against interest by Carmel and Carmel shall retain all rights and defenses it may have under law or equity to initiate or defend against any proceeding related to any Carmel Project for which the Time Limit has not expired and referenced herein. Likewise, DEI retains all rights and defenses it may have to initiate or defend against any proceeding related to any Carmel Project for which the Time Limit has not expired.

F. Either Party may, but is not required to, file a separate lawsuit or proceeding challenging Disputed Costs for each Project or may elect to file one suit or proceeding to include all Carmel Projects involving Disputed Costs which are not otherwise waived as set out above in Section E.

G. If a court or other tribunal or finder of fact determines that Carmel need not pay the Disputed Costs, and such ruling or finding is not subject to any further appeal

or action by either Party ("Final Determination for Carmel"), Carmel shall have the right to immediately withdraw any Disputed Costs from the court-approved account or agreed account, including any interest that accrues based on the type of account in which the funds were deposited. DEI shall not be responsible for any interest or penalties on such funds. DEI shall also reimburse any Initial Payment with thirty (30) days of a Final Determination for Carmel, without interest or penalty accrued.

H. If a court or other tribunal or finder of fact determines that DEI need not pay the Disputed Costs, and such ruling or finding is not subject to any further appeal or action by either Party ("Final Determination for DEI"), DEI shall have the right to immediately withdraw any Disputed Costs from the court-approved account or agreed account including any interest that accrues based on the type of account in which the funds were deposited. Carmel shall not be responsible for any interest or penalties on such funds. DEI shall be entitled to retain any Initial Payment and shall be entitled to the True-Up Payment as described in Section 2, Paragraph(J).

I. The Parties agree that the Final Determination for either Carmel or DEI, as defined above in Paragraphs G or H, will be applied to future relocation projects and URAs involving a request by Carmel to relocate from Carmel road ROWs and to replace above ground facilities with underground facilities or to any Multi-Use Projects, (whether or not identified in this Agreement) except to the extent such Final Determination is overturned by an IURC ruling, ~~or~~ Indiana Supreme Court case law, or United States Supreme Court case, and/or superseded by

legislation that definitively determines the payment obligations addressed in this Agreement.

J. At the conclusion of each Carmel Project (which shall occur after all contractors/subcontractors have submitted their final invoices to DEI) and DEI has invoiced Carmel for any final actual Project costs that exceed the total of the Initial Payment and Remaining Payment ("True-Up Payment"), Carmel shall pay such True-Up Payment after receipt of a final invoice from DEI in accordance with the following schedule: 1) Carmel shall submit the additional costs (the "Carmel True Up Amount") for approval by the Board of Public Works at its next meeting after its receipt of DEI's invoice which include the Carmel True Up Amount and 2) shall reimburse DEI for the Carmel True Up Amount within thirty (30) days after approval by the Board of Public Works; or if the actual costs incurred by DEI to perform the Project are less than Estimated Disputed Cost, DEI shall refund to Carmel the amount of the overpayment (the "DEI True Up Amount") within sixty (60) days after the completion of the Project (as defined above) , unless the under- or over-payment is for a Project that is the subject of a proceeding in which case the payment will be made into the court-approved or agreed account as described in Paragraph 2-E. Neither party is required to pay interest or penalties on any True-Up Payment.

K. The Parties agree and acknowledge that each project identified as a Carmel Project in this Agreement is separate and distinct with a unique start date and any time frame or deadline in this Agreement shall be calculated based on the date of execution of each separate URA, except as otherwise stated in this Agreement.

L. The Parties agree that the purpose of this Agreement is to allow the Carmel Projects to proceed even if a Party elects to challenge such Project(s) in a proceeding and that each Party will undertake best efforts to comply with this Agreement during the pendency of any such challenge.

**SECTION 3. TAX GROSS UP PAYMENTS AND REPRESENTATION BY CARMEL REGARDING MASTER DEVELOPMENT PLAN AND INDEMNIFICATION OF DEI**

On the following basis, DEI agrees to forego collection of tax gross-up charges from Carmel, which would be due if the payments hereunder (or any part thereof) were deemed to be contributions in aid of construction taxable to DEI:

A. Carmel represents and warrants that the Carmel Projects and all payments to DEI under this Agreement are made pursuant to a "master development plan," as such term is used in Pub. Law 115-97, Section 13312(b)(2) (12/22/2017), which master development plan was approved by a governmental entity prior to December 22, 2017, and that payments to DEI made under this Agreement qualify for the exception specified in Pub. Law 115-97, Section 13312(b)(2) (12/22/2017), which exempts the reimbursements from being deemed to be contributions in aid of construction, taxable to DEI under 26 U.S.C. Section 118(b)(2);

B. DEI agrees to accept Carmel's representations hereunder and shall take no actions contrary to those representations or that would cause those representations to be challenged except to the extent required by applicable law or regulation; and

C. As an inducement to DEI's agreement to forego collection of tax gross-up charges from Carmel, which would be due if the payments (or any part thereof) were deemed to be contributions in aid of construction taxable to DEI, Carmel hereby

covenants and agrees to indemnify and to hold harmless DEI from and against any claim, liability, damages or loss, including any tax, penalties, or interest resulting from or arising out of or relating to DEI's reliance on the representations and warranties made by the Carmel under this Section or any finding that any representation or warranty under this Section is false or inaccurate in whole or in part.

**SECTION 4: NOTICE**

Any notice, invoice, order, agreement, or other correspondence required to be sent pursuant to this Agreement, shall be in writing and sent by pre-paid U.S. certified mail, return receipt requested, to the Parties as set forth below:

**TO CARMEL:**

City of Carmel
Department of Engineering
One Civic Square
Carmel, Indiana 46032
ATTN: Jeremy Kashman

**AND**

City of Carmel
Office of Corporation Counsel
One Civic Square
Carmel, Indiana 46032
ATTN: Douglas C. Haney

City of Carmel
Mayor's Office
One Civic Square
Carmel, Indiana 46032
ATTN: The Honorable James Brainard

**TO DEI:**

Duke Energy Indiana, LLC
Ariane Johnson
Associate General Counsel
1000 E. Main Street
Plainfield, IN 46168

Duke Energy Indiana, LLC
Matt Koenig

Manager, Distribution Design
1000 E. Main Street
Plainfield IN 46168

**SECTION 5: GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, except for Indiana's laws regarding conflicts of law, and shall not be altered or otherwise amended except pursuant to an instrument in writing signed by both Parties. The Parties agree and acknowledge that, in the event a lawsuit is filed hereunder, each Party waives any right to a jury trial they may have, and further agree to file any such lawsuit in an appropriate court in Hamilton County, Indiana only and/or with the IURC, whichever is deemed applicable.

**SECTION 6: WAIVER**

Any delay or inaction on behalf of either Party in exercising or pursuing its rights and/or remedies hereunder, shall not operate to waive any such rights and/or remedies in the future, nor shall it affect the rights of such Party, in any way whatsoever, to require specific performance of the other Party under the terms of this Agreement, except as otherwise set forth in this Agreement.

**SECTION 7: NON-ASSIGNMENT**

Both Parties agree and acknowledge that it shall not assign or delegate its responsibilities and obligations set forth herein, nor shall pledge the terms and conditions of this Agreement, to another person or entity without prior written consent of the other Party.

**SECTION 8: SUCCESSOR AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective past and present heirs, executors, administrators, beneficiaries, representatives, subsidiaries, divisions, officers, officials, directors, shareholders, agents, employees, alter egos, successors and assigns.

**SECTION 9: AGREEMENT AS EVIDENCE**

This Agreement may be used as evidence in any subsequent proceeding in which either of the Parties alleges a breach of this Agreement, as well as any proceeding contemplated hereinunder.

**SECTION 10: ENTIRE AGREEMENT**

This Agreement constitutes and contains the entire agreement between the Parties concerning the transactions contemplated herein and supersedes all prior negotiations, proposed agreements and understandings, or representations, if any, written or oral, between the Parties. To the extent that any provision contained in this Agreement conflicts with any provision contained in any URA, the provision contained in this Agreement shall prevail.

**SECTION 11: REPRESENTATIONS AND WARRANTIES BY BOTH PARTIES**

Each Party represents and warrants that it is authorized to enter into this Agreement and that any person or entity that executes this Agreement on behalf of such Party has the authority to bind such Party, or the Party which they represent. The Parties further warrant that they have read this Agreement and fully understand it, have had an opportunity to obtain the advice and assistance of counsel of their choosing throughout the negotiation of the same, and enter the same freely, voluntarily, and without any duress, undue influence or coercion.

**SECTION 12: SEVERABILITY**

In the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be excised, restricted, or otherwise modified to the extent necessary to render the same valid and enforceable.

**SECTION 13: SECTION HEADINGS**

The section headings herein have been used as a convenience of reference only, and shall in no way modify or restrict any of the terms or provisions hereof.

**SECTION 14: COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF,** the Parties have signed and executed this Agreement on the dates below their respective signature(s), or the signature(s) of their representative(s). The effective date of this Agreement shall be the date of the last signature affixed hereto.

**CITY OF CARMEL, INDIANA ("CARMEL")**

**BY:** The Honorable James C. Brainard

James C. Brainard, Mayor, by Ashley M. Ulbricht, Carmel City Attorney

INSERT NAME HERE
INSERT TITLE HERE

4-15-2020

Date

**DUKE ENERGY INDIANA, LLC ("DEI")**

**BY:**

Donald A McDuffy
Director, Asset Design
Indiana Customer Delivery

Date

# UTILITY REIMBURSEMENT AGREEMENT

**([OH Road To UG Road-- Cost Difference]**

## City of Carmel - Project)

***(Revised 2-27-20)***

**THIS UTILITY REIMBURSEMENT AGREEMENT (the "Agreement")**, is made and entered into this 29 day of April 2020 (the "Effective Date"), by and between **Duke Energy Indiana, LLC**, an Indiana limited liability company ("DEI"), and the **City of Carmel, Indiana** ("Carmel"). Hereinafter, DEI and Carmel may be individually referred to as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, Carmel and DEI entered into that certain Provisional Utility Relocation Cost Payment Agreement ("PURCPA"), effective as of April 15, 2020, a copy of which is attached hereto and incorporated herein as Exhibit B, pursuant to which the Parties reached a provisional agreement relating to the allocation of costs for relocating certain electric facilities for multi-use improvement projects and/or from above ground to underground facilities with respect to those Projects defined in the PURCPA; and.

**WHEREAS**, DEI has constructed and now operates and maintains certain [overhead electric facilities upon and/or along ***[Guilford Rd.(Between Main Street and City Center Dr.)]*** in **[Hamilton County, Carmel]** all of which are more particularly depicted or described on the attached Exhibit "A" (hereinafter referred to as "the Utility Facilities"); and

**WHEREAS**, Carmel has requested that DEI relocate the Utility Facilities to [an underground relocation area] acquired by Carmel, as depicted or described on Exhibit "A" (the "Relocation Area"); and

**WHEREAS**, the Parties have determined that the Relocation Area is suitable, and DEI is willing to relocate the Utility Facilities to the Relocation Area; provided that Carmel reimburses DEI for the [difference between actual costs incurred by DEI to relocate the Utility Facilities in an underground manner and the estimated cost of relocating the Utility

Facility Facilities in an overhead manner ("Incremental Costs") as set forth in the PURCPA and referred to therein as "Disputed Costs"; and

**WHEREAS**, Carmel is willing to reimburse DEI for such present and future costs in accordance with the terms of the PURCPA incorporated herein;

**NOW, THEREFORE**, for and in consideration of the mutual promises from, to and between DEI and Carmel, hereinafter contained, DEI and Carmel do hereby agree to and with each other, as follows:

**SECTION I**. DEI will relocate the Utility Facilities to said Relocation Area in a manner, as depicted or described on Exhibit "A" (hereinafter referred to as "the Project"). The preliminary estimated Disputed Costs for the Project is as follows **$560,641.38** (the "Estimated Disputed Cost") as shown on the attached Exhibit "B."

**SECTION II**. Subject to the terms and conditions specified in Sections II of the PURCPA, Carmel shall reimburse DEI for the actual costs incurred by DEI to perform the Project in accordance with the following schedule: (i) after the execution of this Agreement DEI shall invoice Carmel for and Carmel shall pay DEI, in advance, fifty percent (50%) of the Estimated Disputed Costs within thirty (30) days after the Effective Date of this Agreement; (ii) the remaining 50% of the Estimated (or if complete, the Final) Disputed Costs shall be due and payable as set forth in the PURCPA, within one hundred and eighty (180) days after Carmel has received written notice from DEI in the form of an invoice that DEI has Commenced Work; and (iii) upon completion of the Project (a) If the [actual Incremental Costs] incurred by DEI to perform the Project exceed the Estimated Disputed Costs, Carmel shall pay the additional amount due in accordance with Section II. (I) of the PURCPA. All invoices shall include supporting documentation to substantiate the claim. 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 necessary by Carmel to support such invoice.

**SECTION III.** DEI shall not start the Project until the following has occurred:

(a) written notice has been given to DEI by Carmel that (i) the Project has been authorized and funds are available to reimburse DEI, and (ii) all necessary public road right of way has been acquired for the Project,

(b) Carmel has denoted the public road right of way line in the area of the Project, by staked survey at not more than 100-foot intervals with station markings,

(c) Carmel has trimmed/removed all vegetation away from the public road right of way in the area of the Project, as reasonably determined by DEI, and

(d) Carmel and DEI have executed this Agreement.

**SECTION IV**. DEI shall not discriminate against any employee or applicant for employment, in the performance of this Agreement, 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, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

**SECTION V**. DEI shall indemnify and hold harmless Carmel 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 arising out of the Project (hereafter "Claim"); provided, however, that where Carmel is negligent or engages in intentional misconduct with respect to the occurrence or occurrences giving rise to the Claim, DEI shall have no duty to indemnify and hold harmless Carmel.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by through their duly authorized representatives, effective the date first above written.

**DUKE ENERGY INDIANA, LLC**

*Cynthia A. Rowland*

Signature

Sr. Engineering Technologist

Title

May 26, 2020

Date

Approved and Adopted this 29 day of Septa. 2020 By:

**CITY OF CARMEL, INDIANA**
~~By and through its Board of Public Works and Safety~~
BY:

By Benjamin Legge BL 9/29/2020

James Brainard, Presiding Officer
Date: 29 September 2020

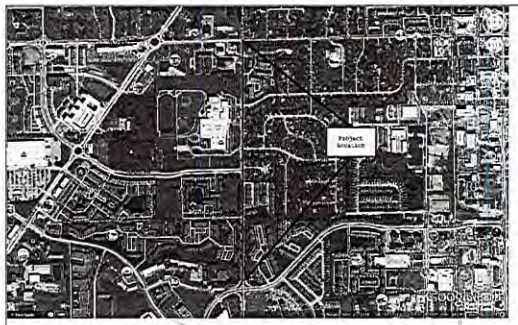
Mary Ann Burke, Member
Date:

Lori S. Watson, Member
Date:

ATTEST:

~~Sue Wolfgang, Clerk~~ Douglas Haney, Corporation Counsel
Date: 29 September 2020

| SAFETY | Upstream Protection | | Safety Reminders / Adverse Conditions | | Other Project Notes |
|---|---|---|---|---|---|
| ▷ PERSONAL ACCOUNTABILITY<br>▷ ACTIVE GAMING<br>▷ HAZARD RECOGNITION | BREAKER AT SUB: 526 S. RANGELINE RD | CIRCLE FOR DUKE ENERGY SAFETY | Remember "Your Circle of Safety" | REMEMBER: Work zone area conditions may have changed for this job. Everyone is responsible for verifying the safety information is correct prior to any work being performed each day. | RELOCATION TO ACCOMODATE ROUNDABOUT CONSTRUCTION |




**P1:300-186**
RM: 50'-2
IN: 50'-2
DEADEND(03.11-127)
POWER CABLE RISER(21.05-110)
25' & 20' LEADS
**GUILFORD RD & 126TH**
**ST. CABLE DISC**

Splice UG SVC
Between Existing
Pole & New XFMR

**P37:PAD HMI-22644**
IN:25kVA XFMR(BØ)(27110DUK)
**CONDUCTOR BORE DEPTH OF**
**NO LESS THAN 4'**

**P74: SEC. SPLICE PIT 3**

S68-51'-IN
4/0ALTXUG-SEC

158'-559AAACB19-BCA
2/0AAACB7-N

126th St

**P3:300-184:**
RM: 50'-2
100A Fuse(AØ)

**P4:300-183:**
RM: 50'-2

Guilford Rd

74'

Install Cable Within
ROW at Approximately
4 ft Depth - Within
2 ft ROW Line

S2-RM-172'
559AAACB19-ABC
270AAACB7-N

S3-RM-168'
559AAACB19-ABC
2/0AAACB7-N

S36-NEW-108'-1/0ALTRXLPEJ15-AØ

S37-NEW-735'-1000ALTRXJPE15-ABCN

Matchline Sheet 2

**P2:300-185:**
RM: 50'-2

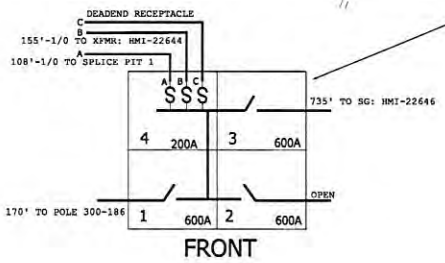
**P38:SWITCH GEAR 1**
**PAD HMI-22645:**
IN:PME-11(27600DUK)

**P39:SPLICE PIT 1**
SPLICE 1/0 UG PRIMARY
INTO EXISTING. SPLICE
ON BACK SIDE OF WALK
SLC IN FRONT OF SIGN
*ACTIVE IRRIGATION
*USE VAC TRUCK

Bore Power Cable From
Waterlilly Way North
To Chimney Rock Under
Sidewalk
*BORE AT R/W EDGE

Waterlilly Way

PAD: HMI-11572
50kVA XFMR(AØ)




**NOTE:**
**Maintain Minimum 3ft Horizontal Seperation Between Power Cable & 1Ø.**
**Bore PC along the ROW.**

**Note:**
All Duke Street Lighting Will Be Removed. Please Contact Carmel District Tech To Provide Meter Points For Carmel Owned Lighting. Future Service Points at STA 43+00 or Pad Mount XFMR at STA 28+00

| General Information | |
|---|---|
| INDOT DES # | 1383180 |
| | |
| GUILFORD RD | |
| CARMEL | |
| HAMILTON COUNTY, IN | |
| CLAY TOWNSHIP | |

| Work Order Information | | | | | |
|---|---|---|---|---|---|
| Distribution | | | | | |
| Emax # | Project Code | | | | OU / Center |
| 33215792 | MX3215792 | | | | V562/S431 |
| Transmission | | | | | |
| Emax # | Install | Remove | OH Maint. | UG Maint. | OU / Center |
| | | | | | |

| Circuit Information |
|---|
| Distribution |
| Carmel 1st Ave SW |
| 1263 Circuit |
| Transmission |
| |

| Duke Energy Legend | | | |
|---|---|---|---|
| ○ | Existing Duke Pole | ⟵ | Existing Downguy |
| ○ | Proposed Duke Pole | ⟵ | Proposed Downguy |
| ○ | Remove Duke Pole | —·—·— | Transmission Line |
| ⊘ | Existing Foreign Pole | ——— | Distribution Line |
| ⊘ | Proposed Foreign Pole | ——— | Secondary Line |
| ⊘ | Remove Foreign Pole | ⊢ | Overhead Light |

ILLINOIS ZERO INJURY

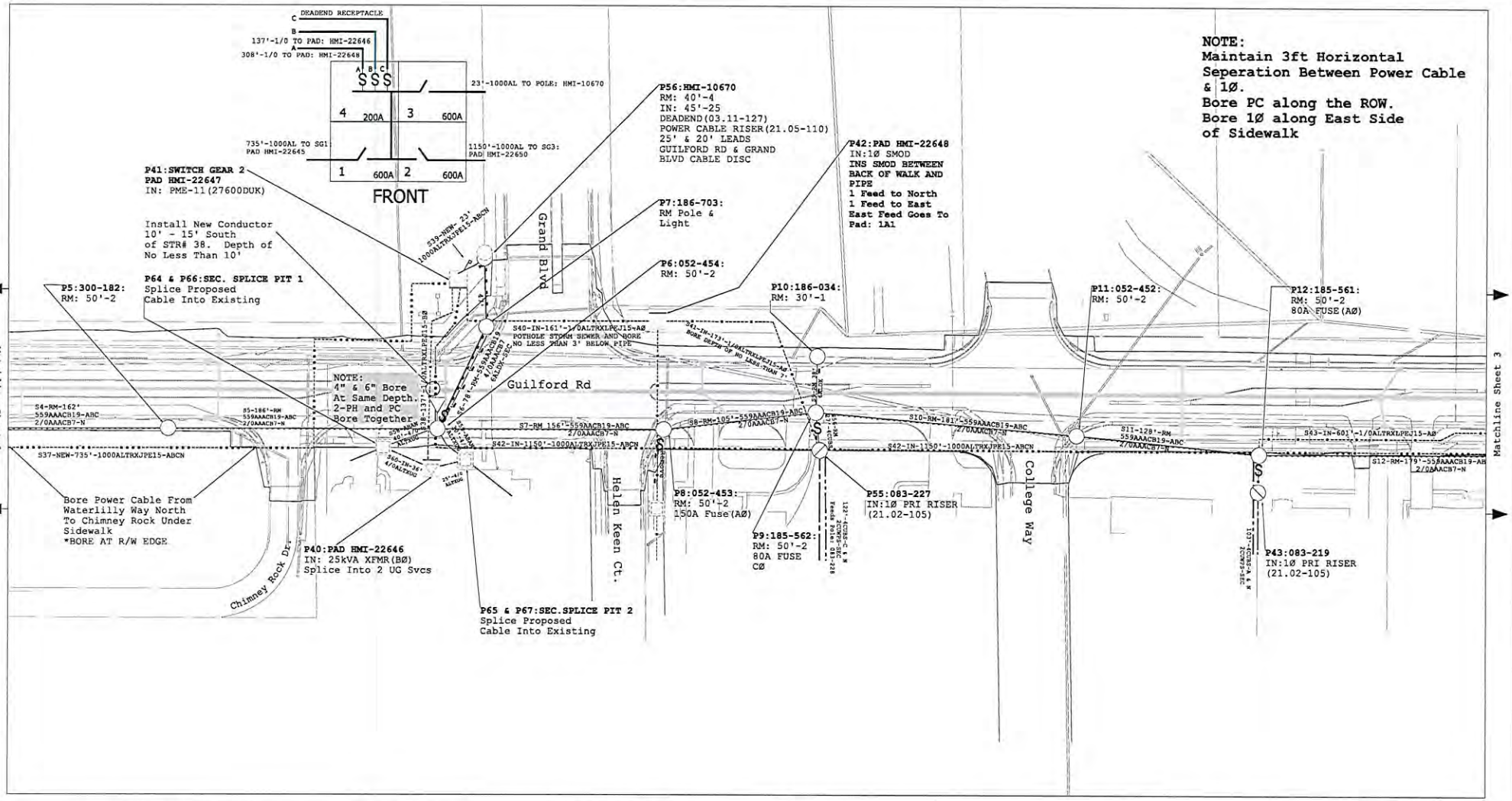
811 Know what's below. Call before you dig.

DUKE ENERGY.

| | |
|---|---|
| INDEX | 12kV DISTRIBUTION LINES |
| DETAIL | Guilford Rd and Main Street Roundabout Construction |
| DATE | 7.1.2019 |
| LOCATION | 39.969233, -86.141029 |
| DRAWN | Dan Benson |
| PHONE | 317-315-4681 |
| ELECTRIC TRANSMISSION & DISTRIBUTION LINE ENGINEERING | APPROVAL SIGNATURE |
| DWG NO | SHEET 1 OF 4 |

Exhibit A

| SAFETY | Upstream Protection | | Safety Reminders / Adverse Conditions | | Other Project Notes |
|---|---|---|---|---|---|
| ▷ PERSONAL ACCOUNTABILITY<br>▷ ACTIVE CARING<br>▷ HAZARD RECOGNITION | BREAKER AT SUB: 526 S. RANGELINE RD | CIRCLE FOR DUKE ENERGY. SAFETY | Remember "Your Circle of Safety" | REMEMBER: Work zone area conditions may have changed for this job. Everyone is responsible for verifying the safety information is correct prior to any work being performed each day. | RELOCATION TO ACCOMODATE ROUNDABOUT CONSTRUCTION |




| General Information | |
|---|---|
| INDOT DES # | 1383180 |
| | |
| GUILFORD RD | |
| CARMEL | |
| HAMILTON COUNTY, IN | |
| CLAY TOWNSHIP | |

| Work Order Information | | | | | |
|---|---|---|---|---|---|
| Distribution | | | | | |
| Emax # | Project Code | | | | OU / Center |
| 33215792 | MX3215792 | | | | V562/S431 |
| Transmission | | | | | |
| Emax # | Install | Remove | OH Maint. | UG Maint. | OU / Center |
| | | | | | |

| Circuit Information |
|---|
| Distribution |
| Carmel 1st Ave SW |
| 1263 Circuit |
| Transmission |

| Duke Energy Legend | | | |
|---|---|---|---|
| ○ | Existing Duke Pole | ← | Existing Downguy |
| ○ | Proposed Duke Pole | ← | Proposed Downguy |
| ○ | Remove Duke Pole | | Transmission Line |
| ⊘ | Existing Foreign Pole | | Distribution Line |
| ○ | Proposed Foreign Pole | | Secondary Line |
| ⊘ | Remove Foreign Pole | | Overhead Light |

ILLINESS ZERO INJURY

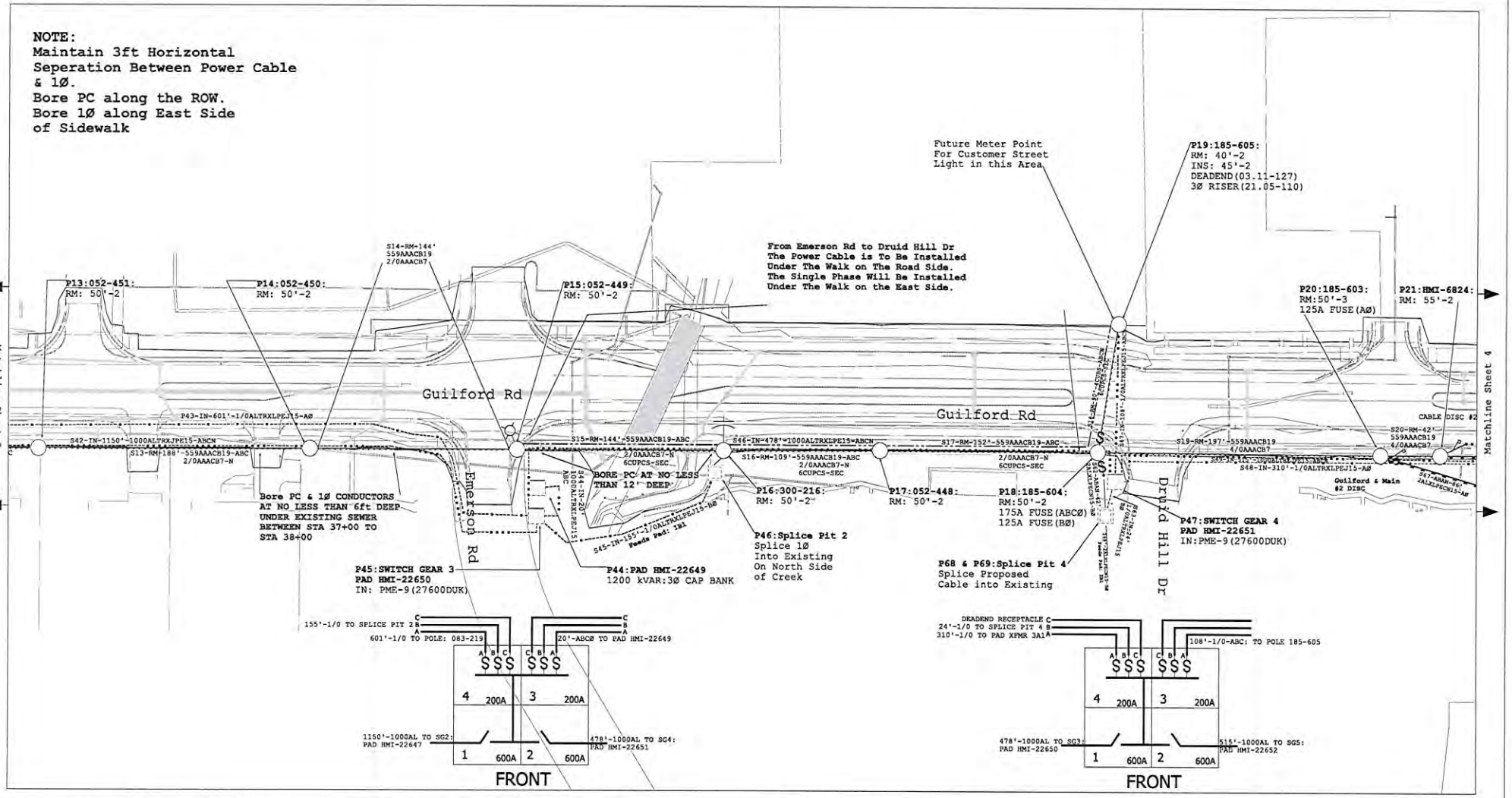
811 Know what's below. Call before you dig.

| DUKE ENERGY. | | | |
|---|---|---|---|
| INDEX | 12kV DISTRIBUTION LINES | | |
| DETAIL | Guilford Rd and Main Street Roundabout Construction | | |
| DATE | 7.1.2019 | LOCATION | 39.969233, -86.141029 |
| DRAWN | Dan Benson | PHONE | 317-315-4681 |
| ELECTRIC TRANSMISSION & DISTRIBUTION LINE ENGINEERING | APPROVAL SIGNATURE | DWG NO | SHEET 2 OF 4 |

Exhibit A

| SAFETY | Upstream Protection | | Safety Reminders / Adverse Conditions | | Other Project Notes |
|---|---|---|---|---|---|
| ▷ PERSONAL ACCOUNTABILITY<br>▷ ACTIVE CARING<br>▷ HAZARD RECOGNITION | BREAKER AT SUB: 526 S. RANGELINE RD | CIRCLE FOR SAFETY | Remember "Your Circle of Safety" | REMEMBER: Work zone area conditions may have changed for this job. Everyone is responsible for verifying the safety information is correct prior to any work being performed each day. | RELOCATION TO ACCOMODATE ROUNDABOUT CONSTRUCTION |

**NOTE:**
**Maintain 3ft Horizontal Seperation Between Power Cable & 1Ø.**
**Bore PC along the ROW.**
**Bore 1Ø along East Side of Sidewalk**




| General Information | |
|---|---|
| INDOT DES # | 1383180 |
| | |
| GUILFORD RD | |
| CARMEL | |
| HAMILTON COUNTY, IN | |
| CLAY TOWNSHIP | |

| Work Order Information | | | | | |
|---|---|---|---|---|---|
| Distribution | | | | | |
| Emax # | Project Code | | | | OU / Center |
| 33215792 | MX3215792 | | | | V562/S431 |
| Transmission | | | | | |
| Emax # | Install | Remove | OH Maint. | UG Maint. | OU / Center |
| | | | | | |

| Circuit Information |
|---|
| Distribution |
| Carmel 1st Ave SW |
| 1263 Circuit |
| Transmission |

| Duke Energy Legend | | | |
|---|---|---|---|
| ○ | Existing Duke Pole | ←— | Existing Downguy |
| ○ | Proposed Duke Pole | ←— | Proposed Downguy |
| ○ | Remove Duke Pole | —·—·— | Transmission Line |
| ⊘ | Existing Foreign Pole | ——— | Distribution Line |
| ⊘ | Proposed Foreign Pole | ——— | Secondary Line |
| ⊘ | Remove Foreign Pole | ⊟ | Overhead Light |

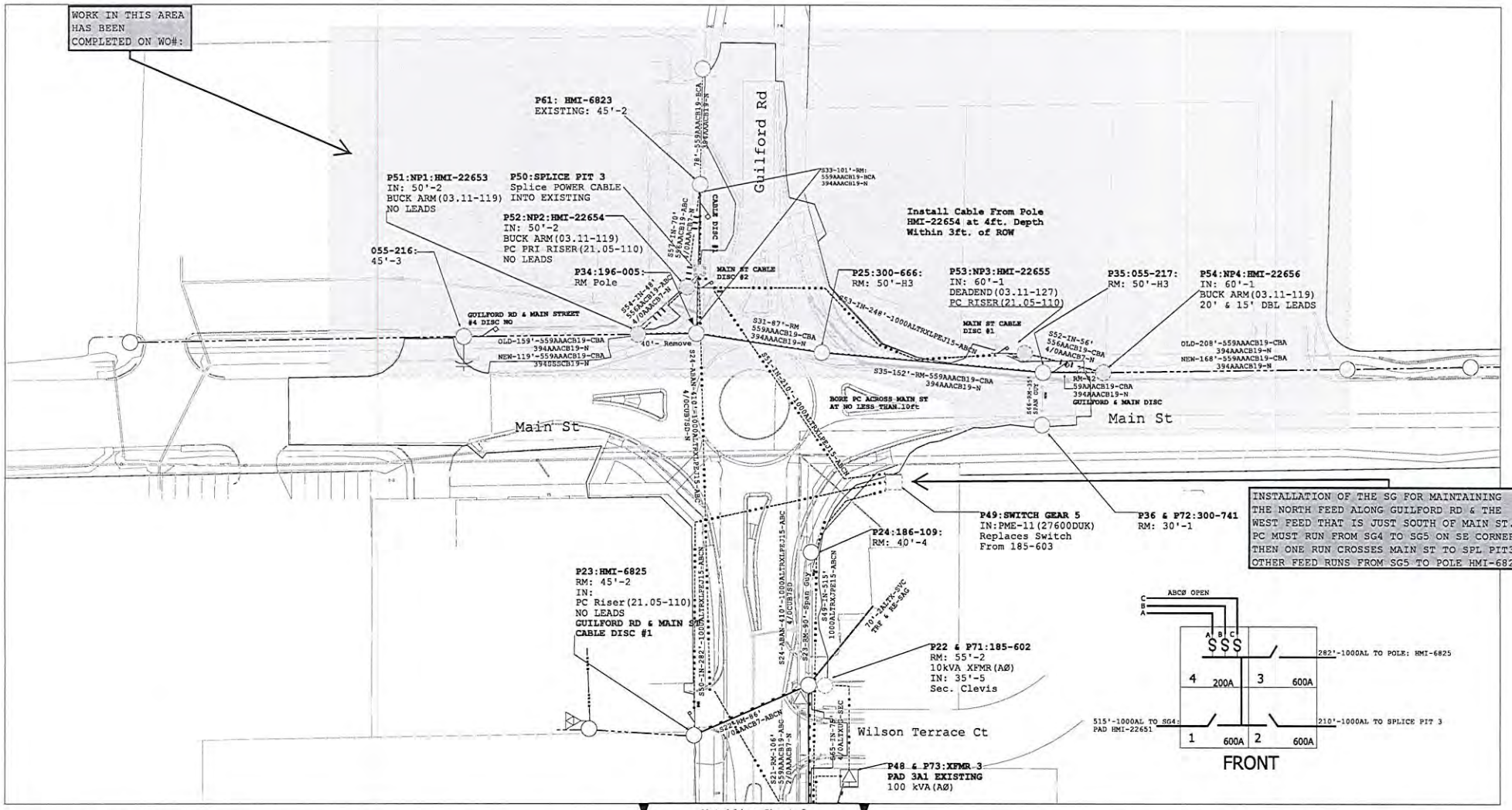
ILLINOIS ZERO INJURY

811 Know what's below. Call before you dig.

| DUKE ENERGY. | | |
|---|---|---|
| | INDEX | 12kV DISTRIBUTION LINES |
| | DETAIL | Guilford Rd and Main Street Roundabout Construction |
| DATE 7.1.2019 | LOCATION | 39.969233, -86.141029 |
| DRAWN Dan Benson | PHONE | 317-315-4681 |
| ELECTRIC TRANSMISSION & DISTRIBUTION LINE ENGINEERING | APPROVAL SIGNATURE | DWG NO SHEET 3 OF 4 |

Exhibit A

| SAFETY | Upstream Protection | Safety Reminders / Adverse Conditions | | Other Project Notes |
|---|---|---|---|---|
| ▷ PERSONAL ACCOUNTABILITY<br>▷ ACTIVE CARING<br>▷ HAZARD RECOGNITION | BREAKER AT SUB: 526 S. RANGELINE RD | Remember "Your Circle of Safety" | REMEMBER: Work zone area conditions may have changed for this job. Everyone is responsible for verifying the safety information is correct prior to any work being performed each day. | RELOCATION TO ACCOMODATE ROUNDABOUT CONSTRUCTION |




Matchline Sheet 3

| General Information | |
|---|---|
| INDOT DES # | 1383180 |
| GUILFORD RD | |
| CARMEL | |
| HAMILTON COUNTY, IN | |
| CLAY TOWNSHIP | |

| Work Order Information | | | | | |
|---|---|---|---|---|---|
| Distribution | | | | | |
| Emax # | Project Code | | | | OU / Center |
| 33215792 | MX3215792 | | | | V562/S431 |
| Transmission | | | | | |
| Emax # | Install | Remove | OH Maint. | UG Maint. | OU / Center |
| | | | | | |

| Circuit Information |
|---|
| Distribution |
| Carmel 1st Ave SW |
| 1263 Circuit |
| Transmission |
| |

| Duke Energy Legend | | | |
|---|---|---|---|
| ○ | Existing Duke Pole | ⟵ | Existing Downguy |
| ○ | Proposed Duke Pole | ⟵ | Proposed Downguy |
| ○ | Remove Duke Pole | | Transmission Line |
| ⊘ | Existing Foreign Pole | | Distribution Line |
| ⊘ | Proposed Foreign Pole | | Secondary Line |
| ⊘ | Remove Foreign Pole | | Overhead Light |

ILLINOIS ZERO INJURY

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DUKE ENERGY.

| | |
|---|---|
| INDEX | 12kV DISTRIBUTION LINES |
| DETAIL | Guilford Rd and Main Street Roundabout Construction |
| DATE | 7.1.2019 |
| LOCATION | 39.969233, -86.141029 |
| DRAWN | Dan Benson |
| PHONE | 317-315-4681 |
| ELECTRIC TRANSMISSION & DISTRIBUTION LINE ENGINEERING | APPROVAL SIGNATURE |
| DWG NO | SHEET 4 OF 4 |

Exhibit A

# CU Estimate
## Job Cost Summary
## Sorted by: Site, Employee Name



| | | | | | |
|---|---|---|---|---|---|
| **Estimate Request:** | 2419087 | Design 28288002 - A for Work Request 28288002@SUBMIT_FOR_ESTIMATE | | **Request Type:** | JOB |
| **Work Site:** | TD-IN | | | | |
| **Master WO:** | 28288002 | INDOT - GUILFORD RD - CARMEL - DES NO 1383180 | | | |
| **Estimate Version:** | 15 | Design 28288002 - A for Work Request 28288002@SUBMIT_FOR_ESTIMATE | | **Estimate Type:** | COSTONLY |
| **Estimated On:** | 04/28/2020 | **At:** 02:23:59 PM | **By:** MAXADMIN | | |

| | | Internal | External | Total |
|---|---|---|---|---|
| **Labor Hours** | | | | |
| | Labor Hours - On Site: | 3838.17 | | 3838.17 |
| | Labor Hours - Off Site: | 0 | 0 | 0 |
| | **Total Labor Hours:** | **3838.17** | **0** | **3838.17** |
| **Costs** | Labor Cost: | 370655.72 | 0 | 370655.72 |
| | Services Cost: | | 61320 | 61320 |
| | Tools Cost: | 0 | 0 | 0 |
| | **Total Labor, Services, & Tools Cost:** | **370655.72** | **61320** | **431975.72** |
| | New Material Cost: | 202108.03 | 0 | 202108.03 |
| | Less Salvage: | 0 | | 0 |
| | **Total Material Cost:** | **202108.03** | **0** | **202108.03** |
| | Total Overheads: | | | 221843.63 |
| | Total Gross Cost: | | | 855927.38 |
| | Less OH Relocation Cost: | | | 295286 |
| | Total Net Cost: | | | 560641.38 |
| | Plus Total Deferred Cost: | | | 0 |
| | **Total Estimated Cost:** | | | **560641.38** |



Exhibit B

**PROVISIONAL UTILITY RELOCATION COST PAYMENT AGREEMENT**

This Provisional Utility Relocation Cost Payment Agreement ("PURCPA") is entered by and between the City of Carmel, Indiana ("Carmel") and Duke Energy Indiana, LLC ("DEI"), (collectively the "Parties"), and is effective on and after the due date of its execution by the last Party to sign the PURCPA.

**WHEREAS**, the Parties disagree about the relationship between and the application of certain provisions of Carmel City Code, Indiana Code § 8-1-2-101 *et. seq.*, and DEI's General Electric Tariff, General Terms and Conditions, including Section 9, as those may relate to the responsibility for costs associated with relocating certain DEI facilities to accommodate the Carmel Projects defined below; and

**WHEREAS**, assuming a safe, reasonable alternate location, DEI recognizes its obligation to pay for and relocate DEI facilities presently in Carmel public road Right of Way ("ROW") on a like-for-like basis, if Carmel requests the relocation for a Carmel road improvement project ("Road Improvement Projects"); and

**WHEREAS**, DEI contends that under applicable state law and regulations and in moving facilities for Carmel Road Improvement Projects, it is only obligated to pay to relocate above-ground facilities to above-ground facilities and that Carmel is responsible for any cost differential to relocate DEI facilities from above-ground facilities to underground facilities; and

WHEREAS, Carmel contends that DEI must abide by applicable laws including state laws and statutes and Carmel ordinances and regulations and pay the cost differential in moving above-ground facilities to underground facilities for Road Improvement Projects where such state laws and statutes and Carmel ordinances and regulations provide for underground relocation; and

**WHEREAS**, the Parties dispute whether DEI is obligated to pay anything to relocate DEI facilities in Carmel-owned ROWs at Carmel's request, for multi-use projects and non-road improvement projects (collectively" Multi-Use Projects"); and

**WHEREAS**, the Parties wish to move forward on the Carmel Projects on the terms set forth herein and to defer resolution of their issues to a later time;

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING** and for other valuable consideration, the receipt and sufficiency of which is acknowledged by each of them, the Parties agree as follows:

**SECTION 1: CARMEL PROJECTS DEFINED**

This PURCPA applies to the listed projects in this Section ("Carmel Projects"), which list may be amended from time to time by letter agreement signed by both Parties. The Parties agree that while each project is separate and distinct, the projects can generally be classified as follows:

A. Road Improvement Projects that involve a cost differential to move DEI facilities from above-ground to underground:

1. Guilford Road Improvement Project – Relocate overhead electric facilities in current ROW to underground electric facilities from Guilford Road from 126th Street, North to Main Street (131st Street);
2. Rangeline Road Improvement Project – Relocate overhead electric facilities in current ROW to underground electric facilities from 136th Street, North to US 31 Overpass (includes DEI's request that Carmel enter an evergreen provision);

3. AAAWay at 116th Street Road Reconstruction: Relocate overhead DEI electric facilities in current ROW to underground electric facilities for a new Roundabout;

4. Rangeline Road and 116th Street Road Reconstruction: Relocate overhead DEI electric facilities in current ROW to underground electric facilities for a new Roundabout.

B. Multi-Use Projects:

1. Carmel Drive Multi-Use Project: Relocate underground DEI electric facilities in current ROW deeper below grade from Adam Street, West to Old Meridian Street;

2. 126th Street Multi-Use Project: DEI utility pole above-ground relocation and down guy-wire adjustments;

3. Main Street and Keystone Multi-Use Connection Project: DEI utility pole above-ground relocation and down guy-wire adjustments.

4. 136th Street Multi-Use Path between Rangeline Road and Keystone: DEI underground electric facilities in current ROW to be buried deeper from 048-464 to 069-949 and relocate three poles which will require 2 new poles and other supporting facilities.

5. Gray Road Multi-Use Project between 136th and 146th Streets: DEI Utility pole above-ground relocation and down guy-wire adjustments.

**SECTION 2: TERMS OF PURCPA**

A. Carmel shall execute a separate Utility Reimbursement Agreement ("URA"), in a form attached as Exhibit A, and a Work Plan for each Carmel Project prior to DEI

commencing work for that project. Each proposed URA shall include a DEI cost estimate for the Project's Disputed Costs. "Disputed Costs" means for Road Improvement Projects the cost differential that results from relocating electric facilities in current Carmel road ROW from above-ground to underground. "Disputed Costs" means for Multi-Use Projects the entire costs of the project relocation.

B. Approval of the URA by the Carmel Board of Public Works and Safety shall serve as written notice-as set forth in Section 4 herein to DEI of Carmel's intent to proceed with that Carmel Project and shall trigger the obligations set forth below.

C. Within thirty (30) days of the effective date of the URA for a Carmel Project, Carmel shall make an initial payment to DEI of 50% of the estimated Disputed Costs for such Carmel Project ("Initial Payment").

D. Within thirty (30) days of receipt of the Initial Payment, DEI shall provide Carmel written notice, by email or otherwise, that it has Commenced Work. DEI shall be deemed to have commenced work when DEI begins the design work or other preliminary work necessary to relocate DEI facilities.

E. Within One Hundred and Eighty (180) days after DEI provides written notice to Carmel that it has Commenced Work, Carmel shall make payment of the remaining 50% of the estimated Disputed Costs for the Carmel Project ("Remaining Payment"), noting on the invoice whether Carmel has initiated a lawsuit/or proceeding on that project, as set forth below. If Carmel has initiated suit or other proceeding against DEI in a court of law or at the IURC, whichever is applicable, to obtain a determination as to which Party shall pay the Disputed

Costs, the Remaining Payment must be paid into a court-approved account or a previously agreed upon account. If Carmel does not file a suit or other proceeding against DEI within ninety (90) days after the Initial Payment is made by Carmel ("Time Limit"), Carmel waives its right to do so with respect to all the Disputed Costs for that Carmel Project only, and shall pay all actual costs to DEI as Remaining Costs for that Carmel Project. Nothing herein waives or alters either Party's right to file a suit or proceeding relating to any other Carmel Project for which the Time Limit has not expired. Carmel's failure to file suit as to one Carmel Project, as set forth above, shall not be a waiver of its right to challenge any Disputed Costs relating to any remaining Carmel Projects for which the Time Limit has not expired nor shall it be deemed an admission against interest by Carmel and Carmel shall retain all rights and defenses it may have under law or equity to initiate or defend against any proceeding related to any Carmel Project for which the Time Limit has not expired and referenced herein. Likewise, DEI retains all rights and defenses it may have to initiate or defend against any proceeding related to any Carmel Project for which the Time Limit has not expired.

F. Either Party may, but is not required to, file a separate lawsuit or proceeding challenging Disputed Costs for each Project or may elect to file one suit or proceeding to include all Carmel Projects involving Disputed Costs which are not otherwise waived as set out above in Section E.

G. If a court or other tribunal or finder of fact determines that Carmel need not pay the Disputed Costs, and such ruling or finding is not subject to any further appeal

or action by either Party ("Final Determination for Carmel"), Carmel shall have the right to immediately withdraw any Disputed Costs from the court-approved account or agreed account, including any interest that accrues based on the type of account in which the funds were deposited. DEI shall not be responsible for any interest or penalties on such funds. DEI shall also reimburse any Initial Payment with thirty (30) days of a Final Determination for Carmel, without interest or penalty accrued.

H. If a court or other tribunal or finder of fact determines that DEI need not pay the Disputed Costs, and such ruling or finding is not subject to any further appeal or action by either Party ("Final Determination for DEI"), DEI shall have the right to immediately withdraw any Disputed Costs from the court-approved account or agreed account including any interest that accrues based on the type of account in which the funds were deposited. Carmel shall not be responsible for any interest or penalties on such funds. DEI shall be entitled to retain any Initial Payment and shall be entitled to the True-Up Payment as described in Section 2, Paragraph(J).

I. The Parties agree that ~~the~~ the Final Determination for either Carmel or DEI, as defined above in Paragraphs G or H, will be applied to future relocation projects and URAs involving a request by Carmel to relocate from Carmel road ROWs and to replace above ground facilities with underground facilities or to any Multi-Use Projects, (whether or not identified in this Agreement) except to the extent such Final Determination is overturned by an IURC ruling, ~~or~~ Indiana Supreme Court case law, or United States Supreme Court case, and/or superseded by

legislation that definitively determines the payment obligations addressed in this Agreement.

J. At the conclusion of each Carmel Project (which shall occur after all contractors/subcontractors have submitted their final invoices to DEI) and DEI has invoiced Carmel for any final actual Project costs that exceed the total of the Initial Payment and Remaining Payment ("True-Up Payment"), Carmel shall pay such True-Up Payment after receipt of a final invoice from DEI in accordance with the following schedule: 1) Carmel shall submit the additional costs (the "Carmel True Up Amount") for approval by the Board of Public Works at its next meeting after its receipt of DEI's invoice which include the Carmel True Up Amount and 2) shall reimburse DEI for the Carmel True Up Amount within thirty (30) days after approval by the Board of Public Works; or if the actual costs incurred by DEI to perform the Project are less than Estimated Disputed Cost, DEI shall refund to Carmel the amount of the overpayment (the "DEI True Up Amount") within sixty (60) days after the completion of the Project (as defined above) , unless the under- or over-payment is for a Project that is the subject of a proceeding in which case the payment will be made into the court-approved or agreed account as described in Paragraph 2-E. Neither party is required to pay interest or penalties on any True-Up Payment.

K. The Parties agree and acknowledge that each project identified as a Carmel Project in this Agreement is separate and distinct with a unique start date and any time frame or deadline in this Agreement shall be calculated based on the date of execution of each separate URA, except as otherwise stated in this Agreement.

L. The Parties agree that the purpose of this Agreement is to allow the Carmel Projects to proceed even if a Party elects to challenge such Project(s) in a proceeding and that each Party will undertake best efforts to comply with this Agreement during the pendency of any such challenge.

**SECTION 3. TAX GROSS UP PAYMENTS AND REPRESENTATION BY CARMEL REGARDING MASTER DEVELOPMENT PLAN AND INDEMNIFICATION OF DEI**

On the following basis, DEI agrees to forego collection of tax gross-up charges from Carmel, which would be due if the payments hereunder (or any part thereof) were deemed to be contributions in aid of construction taxable to DEI:

A. Carmel represents and warrants that the Carmel Projects and all payments to DEI under this Agreement are made pursuant to a "master development plan," as such term is used in Pub. Law 115-97, Section 13312(b)(2) (12/22/2017), which master development plan was approved by a governmental entity prior to December 22, 2017, and that payments to DEI made under this Agreement qualify for the exception specified in Pub. Law 115-97, Section 13312(b)(2) (12/22/2017), which exempts the reimbursements from being deemed to be contributions in aid of construction, taxable to DEI under 26 U.S.C. Section 118(b)(2);

B. DEI agrees to accept Carmel's representations hereunder and shall take no actions contrary to those representations or that would cause those representations to be challenged except to the extent required by applicable law or regulation; and

C. As an inducement to DEI's agreement to forego collection of tax gross-up charges from Carmel, which would be due if the payments (or any part thereof) were deemed to be contributions in aid of construction taxable to DEI, Carmel hereby

covenants and agrees to indemnify and to hold harmless DEI from and against any claim, liability, damages or loss, including any tax, penalties, or interest resulting from or arising out of or relating to DEI's reliance on the representations and warranties made by the Carmel under this Section or any finding that any representation or warranty under this Section is false or inaccurate in whole or in part.

**SECTION 4: NOTICE**

Any notice, invoice, order, agreement, or other correspondence required to be sent pursuant to this Agreement, shall be in writing and sent by pre-paid U.S. certified mail, return receipt requested, to the Parties as set forth below:

**TO CARMEL:**

City of Carmel
Department of Engineering
One Civic Square
Carmel, Indiana 46032
ATTN: Jeremy Kashman

**AND**

City of Carmel
Office of Corporation Counsel
One Civic Square
Carmel, Indiana 46032
ATTN: Douglas C. Haney

City of Carmel
Mayor's Office
One Civic Square
Carmel, Indiana 46032
ATTN: The Honorable James Brainard

**TO DEI:**

Duke Energy Indiana, LLC
Ariane Johnson
Associate General Counsel
1000 E. Main Street
Plainfield, IN 46168

Duke Energy Indiana, LLC
Matt Koenig

Manager, Distribution Design
1000 E. Main Street
Plainfield IN 46168

**SECTION 5: GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, except for Indiana's laws regarding conflicts of law, and shall not be altered or otherwise amended except pursuant to an instrument in writing signed by both Parties. The Parties agree and acknowledge that, in the event a lawsuit is filed hereunder, each Party waives any right to a jury trial they may have, and further agree to file any such lawsuit in an appropriate court in Hamilton County, Indiana only and/or with the IURC, whichever is deemed applicable.

**SECTION 6: WAIVER**

Any delay or inaction on behalf of either Party in exercising or pursuing its rights and/or remedies hereunder, shall not operate to waive any such rights and/or remedies in the future, nor shall it affect the rights of such Party, in any way whatsoever, to require specific performance of the other Party under the terms of this Agreement, except as otherwise set forth in this Agreement.

**SECTION 7: NON-ASSIGNMENT**

Both Parties agree and acknowledge that it shall not assign or delegate its responsibilities and obligations set forth herein, nor shall pledge the terms and conditions of this Agreement, to another person or entity without prior written consent of the other Party.

**SECTION 8: SUCCESSOR AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective past and present heirs, executors, administrators, beneficiaries, representatives, subsidiaries, divisions, officers, officials, directors, shareholders, agents, employees, alter egos, successors and assigns.

**SECTION 9: AGREEMENT AS EVIDENCE**

This Agreement may be used as evidence in any subsequent proceeding in which either of the Parties alleges a breach of this Agreement, as well as any proceeding contemplated hereinunder.

**SECTION 10: ENTIRE AGREEMENT**

This Agreement constitutes and contains the entire agreement between the Parties concerning the transactions contemplated herein and supersedes all prior negotiations, proposed agreements and understandings, or representations, if any, written or oral, between the Parties. To the extent that any provision contained in this Agreement conflicts with any provision contained in any URA, the provision contained in this Agreement shall prevail.

**SECTION 11: REPRESENTATIONS AND WARRANTIES BY BOTH PARTIES**

Each Party represents and warrants that it is authorized to enter into this Agreement and that any person or entity that executes this Agreement on behalf of such Party has the authority to bind such Party, or the Party which they represent. The Parties further warrant that they have read this Agreement and fully understand it, have had an opportunity to obtain the advice and assistance of counsel of their choosing throughout the negotiation of the same, and enter the same freely, voluntarily, and without any duress, undue influence or coercion.

**SECTION 12: SEVERABILITY**

In the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be excised, restricted, or otherwise modified to the extent necessary to render the same valid and enforceable.

**SECTION 13: SECTION HEADINGS**

The section headings herein have been used as a convenience of reference only, and shall in no way modify or restrict any of the terms or provisions hereof.

**SECTION 14: COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF,** the Parties have signed and executed this Agreement on the dates below their respective signature(s), or the signature(s) of their representative(s). The effective date of this Agreement shall be the date of the last signature affixed hereto.

**CITY OF CARMEL, INDIANA ("CARMEL")**

**BY:** The Honorable James C. Brainard

James C. Brainard, Mayor, by Ashley M. Ulbricht, Carmel City Attorney

INSERT NAME HERE
INSERT TITLE HERE

4-15-2020

Date

**DUKE ENERGY INDIANA, LLC ("DEI")**

**BY:**

Donald A. McDuffy

Donald A McDuffy
Director, Asset Design
Indiana Customer Delivery

Date

# UTILITY REIMBURSEMENT AGREEMENT

## Multi-Use/Non-road Improvement Project - Actual Cost

## City of Carmel – 126th Street MU Path

***(Revised 2-27-20)***

**THIS UTILITY REIMBURSEMENT AGREEMENT (the "Agreement")**, is made and entered into this 28th day of July, 2020 (the "Effective Date"), by and between **Duke Energy Indiana, LLC**, an Indiana limited liability company ("DEI"), and the **City of Carmel, Indiana** ("Carmel"). Hereinafter, DEI and Carmel may be individually referred to as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, Carmel and DEI entered into that certain Provisional Utility Relocation Cost Payment Agreement ("PURCPA"), effective as of April 15th, 2020, a copy of which is attached hereto and incorporated herein as "Exhibit C", pursuant to which the Parties reached a provisional agreement relating to the allocation of costs for relocating certain electric facilities for multi-use improvement projects and/or from above ground to underground facilities with respect to those Projects defined in the PURCPA; and.

**WHEREAS**, DEI has constructed and now operates and maintains certain facilities upon, in or along ***126th Street (between Keystone Pkwy and Hazel Dell Pkwy)*** in **Hamilton County, Carmel** all of which are more particularly depicted or described on the attached "Exhibit A" (hereinafter referred to as "the Utility Facilities"); and

**WHEREAS**, Carmel has requested that DEI relocate the Utility Facilities to another position owned or acquired by Carmel, as depicted or described on "Exhibit A" (the "Relocation Area"); and

**WHEREAS**, the Parties have determined that the Relocation Area is suitable, and DEI is willing to relocate the Utility Facilities to the Relocation Area; provided that Carmel reimburses DEI for the actual costs incurred by DEI to relocate the Utility Facilities as set forth in the PURCPA and referred to therein as "Disputed Costs"; and

**WHEREAS**, Carmel is willing to reimburse DEI for such present and future costs in accordance with the terms of the PURCPA incorporated herein;

**NOW, THEREFORE**, for and in consideration of the mutual promises from, to and between DEI and Carmel, hereinafter contained, DEI and Carmel do hereby agree to and with each other, as follows:

**SECTION I**. DEI will relocate the Utility Facilities to said Relocation Area in a manner, as depicted or described on "Exhibit A" (hereinafter referred to as "the Project"). The preliminary estimated Disputed Costs for the Project is as follows **$30,211.93** (the "Estimated Disputed Cost") as shown on the attached "Exhibit B".

**SECTION II**. Subject to the terms and conditions specified in Sections II of the PURCPA, Carmel shall reimburse DEI for the actual costs incurred by DEI to perform the Project in accordance with the following schedule: (i) after the execution of this Agreement DEI shall invoice Carmel for and Carmel shall pay DEI, in advance, fifty percent (50%) of the Estimated Disputed Costs within thirty (30) days after the Effective Date of this Agreement; (ii) the remaining 50% of the Estimated (or if complete, the Final) Disputed Costs shall be due and payable as set forth in the PURCPA, within one hundred and eighty (180) days after Carmel has received written notice from DEI in the form of an invoice that DEI has Commenced Work; and (iii) upon completion of the Project (a) If the actual costs incurred by DEI to perform the Project exceed the Estimated Disputed Costs, Carmel shall pay the additional amount due in accordance with Section II. (I) of the PURCPA. All invoices shall include supporting documentation to substantiate the claim. 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 necessary by Carmel to support such invoice.

**SECTION III.** DEI shall not start the Project until the following has occurred:

(a) written notice has been given to DEI by Carmel that (i) the Project has been authorized and funds are available to reimburse DEI, and (ii) all necessary public road right of way

has been acquired for the Project, (b) Carmel has denoted the public road right of way line in the area of the Project, by staked survey at not more than 100-foot intervals with station markings, (c) Carmel has trimmed/removed all vegetation away from the public road right of way in the area of the Project, as reasonably determined by DEI, and

(d) Carmel and DEI have executed this Agreement.

**SECTION IV**. DEI shall not discriminate against any employee or applicant for employment, in the performance of this Agreement, 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, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

**SECTION V**. DEI shall indemnify and hold harmless Carmel 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 arising out of the Project (hereafter "Claim"); provided, however, that where Carmel is negligent or engages in intentional misconduct with respect to the occurrence or occurrences giving rise to the Claim, DEI shall have no duty to indemnify and hold harmless Carmel.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by through their duly authorized representatives, effective the date first above written.

**DUKE ENERGY INDIANA, LLC**

*Cynthia A. Rowland*
Signature

Sr. Engineering Technologist
Title

July 28, 2020
Date

Approved and Adopted this 7th day of October 2020 By:

**CITY OF CARMEL, INDIANA**
By and through its Board of Public Works and Safety
BY:

Not Present
James Brainard, Presiding Officer
Date: _____

DocuSigned by:
Mary Ann Burke
8E37CC0C068E4C4...
Mary Ann Burke, Member
Date: 10/7/2020

DocuSigned by:
Lori Watson
AE7D100C095B434...
Lori S. Watson, Member
Date: 10/7/2020

ATTEST:
DocuSigned by:
Sue Wolfgang
883A29D7A3844C5...
Sue Wolfgang, Clerk
Date: 10/7/2020

SAFETYFirst
- PERSONAL ACCOUNTABILITY
- ACTIVE CARING
- HAZARD RECOGNITION

# Upstream Protection

Type(recloser, breaker, sectionalizer), ID, Location

CIRCLE FOR SAFETY
DUKE ENERGY.

# CU Estimate
## Job Cost Summary
### Sorted by: Site, Employee Name



| | | | | | |
|---|---|---|---|---|---|
| **Estimate Request:** | 5818758 | INDOT Des 1401703 126th Street Multiuse Path@SUBMIT_FOR_ESTIMATE@ @SUBMIT_FOR_ESTIMATE@1 | | **Request Type:** | JOB |
| **Work Site:** | TD-IN | | | | |
| **Master WO:** | 36944938 | INDOT Des 1401703 126th Street Multiuse Path | | | |
| **Estimate Version:** | 5 | INDOT Des 1401703 126th Street Multiuse Path@SUBMIT_FOR_ESTIMATE@ @SUBMIT_FOR_ESTIMATE@1 | | **Estimate Type:** | INPROG |
| **Estimated On:** | 06/10/2020 | **At:** | 01:02:53 PM | **By:** | MAXADMIN |



Exhibit B

# CU Estimate
## Job Cost Summary
### Sorted by: Site, Employee Name



| | | Internal | External | Total |
|---|---|---|---|---|
| **Labor Hours** | | | | |
| | Labor Hours - On Site: | 147.74 | | 147.74 |
| | Labor Hours - Off Site: | 0 | 0 | 0 |
| | **Total Labor Hours:** | **147.74** | **0** | **147.74** |
| **Costs** | Labor Cost: | 14324.83 | 0 | 14324.83 |
| | Services Cost: | | 1440 | 1440 |
| | Tools Cost: | 0 | 0 | 0 |
| | **Total Labor, Services, & Tools Cost** | **14324.83** | **1440** | **15764.83** |
| | New Material Cost: | 2971.87 | 0 | 2971.87 |
| | Less Salvage: | 0 | | 0 |
| | **Total Material Cost:** | **2971.87** | **0** | **2971.87** |
| | Total Overheads: | | | 7281.38 |
| | Total Gross Cost: | | | 26018.08 |
| | Less Applied Contributions: | | | 0 |
| | Total Net Cost: | | | 26018.08 |
| | **Plus CIAC Tax:** | **4193.85** | | 4193.85 |
| | **Total Estimated Cost:** | | | **30211.93** |

Show Report Criteria



Exhibit B

EXECUTION VERSION 3-23-20

# PROVISIONAL UTILITY RELOCATION COST PAYMENT AGREEMENT

This Provisional Utility Relocation Cost Payment Agreement ("PURCPA") is entered by and between the City of Carmel, Indiana ("Carmel") and Duke Energy Indiana, LLC ("DEI"), (collectively the "Parties"), and is effective on and after the due date of its execution by the last Party to sign the PURCPA.

**WHEREAS**, the Parties disagree about the relationship between and the application of certain provisions of Carmel City Code, Indiana Code § 8-1-2-101 *et. seq.*, and DEI's General Electric Tariff, General Terms and Conditions, including Section 9, as those may relate to the responsibility for costs associated with relocating certain DEI facilities to accommodate the Carmel Projects defined below; and

**WHEREAS**, assuming a safe, reasonable alternate location, DEI recognizes its obligation to pay for and relocate DEI facilities presently in Carmel public road Right of Way ("ROW") on a like-for-like basis, if Carmel requests the relocation for a Carmel road improvement project ("Road Improvement Projects"); and

**WHEREAS**, DEI contends that under applicable state law and regulations and in moving facilities for Carmel Road Improvement Projects, it is only obligated to pay to relocate above-ground facilities to above-ground facilities and that Carmel is responsible for any cost differential to relocate DEI facilities from above-ground facilities to underground facilities; and

WHEREAS, Carmel contends that DEI must abide by applicable laws including state laws and statutes and Carmel ordinances and regulations and pay the cost differential in moving above-ground facilities to underground facilities for Road Improvement Projects where such state laws and statutes and Carmel ordinances and regulations provide for underground relocation; and

**WHEREAS**, the Parties dispute whether DEI is obligated to pay anything to relocate DEI facilities in Carmel-owned ROWs at Carmel's request, for multi-use projects and non-road improvement projects (collectively" Multi-Use Projects"); and

**WHEREAS**, the Parties wish to move forward on the Carmel Projects on the terms set forth herein and to defer resolution of their issues to a later time;

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING** and for other valuable consideration, the receipt and sufficiency of which is acknowledged by each of them, the Parties agree as follows:

**SECTION 1: CARMEL PROJECTS DEFINED**

This PURCPA applies to the listed projects in this Section ("Carmel Projects"), which list may be amended from time to time by letter agreement signed by both Parties. The Parties agree that while each project is separate and distinct, the projects can generally be classified as follows:

A. Road Improvement Projects that involve a cost differential to move DEI facilities from above-ground to underground:

1. Guilford Road Improvement Project – Relocate overhead electric facilities in current ROW to underground electric facilities from Guilford Road from 126th Street, North to Main Street (131st Street);
2. Rangeline Road Improvement Project – Relocate overhead electric facilities in current ROW to underground electric facilities from 136th Street, North to US 31 Overpass (includes DEI's request that Carmel enter an evergreen provision);

3. AAAWay at 116th Street Road Reconstruction: Relocate overhead DEI electric facilities in current ROW to underground electric facilities for a new Roundabout;

4. Rangeline Road and 116th Street Road Reconstruction: Relocate overhead DEI electric facilities in current ROW to underground electric facilities for a new Roundabout.

B. Multi-Use Projects:

1. Carmel Drive Multi-Use Project: Relocate underground DEI electric facilities in current ROW deeper below grade from Adam Street, West to Old Meridian Street;

2. 126th Street Multi-Use Project: DEI utility pole above-ground relocation and down guy-wire adjustments;

3. Main Street and Keystone Multi-Use Connection Project: DEI utility pole above-ground relocation and down guy-wire adjustments.

4. 136th Street Multi-Use Path between Rangeline Road and Keystone: DEI underground electric facilities in current ROW to be buried deeper from 048-464 to 069-949 and relocate three poles which will require 2 new poles and other supporting facilities.

5. Gray Road Multi-Use Project between 136th and 146th Streets: DEI Utility pole above-ground relocation and down guy-wire adjustments.

**SECTION 2: TERMS OF PURCPA**

A. Carmel shall execute a separate Utility Reimbursement Agreement ("URA"), in a form attached as Exhibit A, and a Work Plan for each Carmel Project prior to DEI

commencing work for that project. Each proposed URA shall include a DEI cost estimate for the Project's Disputed Costs. "Disputed Costs" means for Road Improvement Projects the cost differential that results from relocating electric facilities in current Carmel road ROW from above-ground to underground. "Disputed Costs" means for Multi-Use Projects the entire costs of the project relocation.

B. Approval of the URA by the Carmel Board of Public Works and Safety shall serve as written notice-as set forth in Section 4 herein to DEI of Carmel's intent to proceed with that Carmel Project and shall trigger the obligations set forth below.

C. Within thirty (30) days of the effective date of the URA for a Carmel Project, Carmel shall make an initial payment to DEI of 50% of the estimated Disputed Costs for such Carmel Project ("Initial Payment").

D. Within thirty (30) days of receipt of the Initial Payment, DEI shall provide Carmel written notice, by email or otherwise, that it has Commenced Work. DEI shall be deemed to have commenced work when DEI begins the design work or other preliminary work necessary to relocate DEI facilities.

E. Within One Hundred and Eighty (180) days after DEI provides written notice to Carmel that it has Commenced Work, Carmel shall make payment of the remaining 50% of the estimated Disputed Costs for the Carmel Project ("Remaining Payment"), noting on the invoice whether Carmel has initiated a lawsuit/or proceeding on that project, as set forth below. If Carmel has initiated suit or other proceeding against DEI in a court of law or at the IURC, whichever is applicable, to obtain a determination as to which Party shall pay the Disputed

Costs, the Remaining Payment must be paid into a court-approved account or a previously agreed upon account. If Carmel does not file a suit or other proceeding against DEI within ninety (90) days after the Initial Payment is made by Carmel ("Time Limit"), Carmel waives its right to do so with respect to all the Disputed Costs for that Carmel Project only, and shall pay all actual costs to DEI as Remaining Costs for that Carmel Project. Nothing herein waives or alters either Party's right to file a suit or proceeding relating to any other Carmel Project for which the Time Limit has not expired. Carmel's failure to file suit as to one Carmel Project, as set forth above, shall not be a waiver of its right to challenge any Disputed Costs relating to any remaining Carmel Projects for which the Time Limit has not expired nor shall it be deemed an admission against interest by Carmel and Carmel shall retain all rights and defenses it may have under law or equity to initiate or defend against any proceeding related to any Carmel Project for which the Time Limit has not expired and referenced herein. Likewise, DEI retains all rights and defenses it may have to initiate or defend against any proceeding related to any Carmel Project for which the Time Limit has not expired.

F. Either Party may, but is not required to, file a separate lawsuit or proceeding challenging Disputed Costs for each Project or may elect to file one suit or proceeding to include all Carmel Projects involving Disputed Costs which are not otherwise waived as set out above in Section E.

G. If a court or other tribunal or finder of fact determines that Carmel need not pay the Disputed Costs, and such ruling or finding is not subject to any further appeal

or action by either Party ("Final Determination for Carmel"), Carmel shall have the right to immediately withdraw any Disputed Costs from the court-approved account or agreed account, including any interest that accrues based on the type of account in which the funds were deposited. DEI shall not be responsible for any interest or penalties on such funds. DEI shall also reimburse any Initial Payment with thirty (30) days of a Final Determination for Carmel, without interest or penalty accrued.

H. If a court or other tribunal or finder of fact determines that DEI need not pay the Disputed Costs, and such ruling or finding is not subject to any further appeal or action by either Party ("Final Determination for DEI"), DEI shall have the right to immediately withdraw any Disputed Costs from the court-approved account or agreed account including any interest that accrues based on the type of account in which the funds were deposited. Carmel shall not be responsible for any interest or penalties on such funds. DEI shall be entitled to retain any Initial Payment and shall be entitled to the True-Up Payment as described in Section 2, Paragraph(J).

I. The Parties agree that the Final Determination for either Carmel or DEI, as defined above in Paragraphs G or H, will be applied to future relocation projects and URAs involving a request by Carmel to relocate from Carmel road ROWs and to replace above ground facilities with underground facilities or to any Multi-Use Projects, (whether or not identified in this Agreement) except to the extent such Final Determination is overturned by an IURC ruling, ~~or~~ Indiana Supreme Court case law, or United States Supreme Court case, and/or superseded by

legislation that definitively determines the payment obligations addressed in this Agreement.

J. At the conclusion of each Carmel Project (which shall occur after all contractors/subcontractors have submitted their final invoices to DEI) and DEI has invoiced Carmel for any final actual Project costs that exceed the total of the Initial Payment and Remaining Payment ("True-Up Payment"), Carmel shall pay such True-Up Payment after receipt of a final invoice from DEI in accordance with the following schedule: 1) Carmel shall submit the additional costs (the "Carmel True Up Amount") for approval by the Board of Public Works at its next meeting after its receipt of DEI's invoice which include the Carmel True Up Amount and 2) shall reimburse DEI for the Carmel True Up Amount within thirty (30) days after approval by the Board of Public Works; or if the actual costs incurred by DEI to perform the Project are less than Estimated Disputed Cost, DEI shall refund to Carmel the amount of the overpayment (the "DEI True Up Amount") within sixty (60) days after the completion of the Project (as defined above) , unless the under- or over-payment is for a Project that is the subject of a proceeding in which case the payment will be made into the court-approved or agreed account as described in Paragraph 2-E. Neither party is required to pay interest or penalties on any True-Up Payment.

K. The Parties agree and acknowledge that each project identified as a Carmel Project in this Agreement is separate and distinct with a unique start date and any time frame or deadline in this Agreement shall be calculated based on the date of execution of each separate URA, except as otherwise stated in this Agreement.

L. The Parties agree that the purpose of this Agreement is to allow the Carmel Projects to proceed even if a Party elects to challenge such Project(s) in a proceeding and that each Party will undertake best efforts to comply with this Agreement during the pendency of any such challenge.

**SECTION 3. TAX GROSS UP PAYMENTS AND REPRESENTATION BY CARMEL REGARDING MASTER DEVELOPMENT PLAN AND INDEMNIFICATION OF DEI**

On the following basis, DEI agrees to forego collection of tax gross-up charges from Carmel, which would be due if the payments hereunder (or any part thereof) were deemed to be contributions in aid of construction taxable to DEI:

A. Carmel represents and warrants that the Carmel Projects and all payments to DEI under this Agreement are made pursuant to a "master development plan," as such term is used in Pub. Law 115-97, Section 13312(b)(2) (12/22/2017), which master development plan was approved by a governmental entity prior to December 22, 2017, and that payments to DEI made under this Agreement qualify for the exception specified in Pub. Law 115-97, Section 13312(b)(2) (12/22/2017), which exempts the reimbursements from being deemed to be contributions in aid of construction, taxable to DEI under 26 U.S.C. Section 118(b)(2);

B. DEI agrees to accept Carmel's representations hereunder and shall take no actions contrary to those representations or that would cause those representations to be challenged except to the extent required by applicable law or regulation; and

C. As an inducement to DEI's agreement to forego collection of tax gross-up charges from Carmel, which would be due if the payments (or any part thereof) were deemed to be contributions in aid of construction taxable to DEI, Carmel hereby

covenants and agrees to indemnify and to hold harmless DEI from and against any claim, liability, damages or loss, including any tax, penalties, or interest resulting from or arising out of or relating to DEI's reliance on the representations and warranties made by the Carmel under this Section or any finding that any representation or warranty under this Section is false or inaccurate in whole or in part.

**SECTION 4: NOTICE**

Any notice, invoice, order, agreement, or other correspondence required to be sent pursuant to this Agreement, shall be in writing and sent by pre-paid U.S. certified mail, return receipt requested, to the Parties as set forth below:

**TO CARMEL:**

City of Carmel
Department of Engineering
One Civic Square
Carmel, Indiana 46032
ATTN: Jeremy Kashman

**AND**

City of Carmel
Office of Corporation Counsel
One Civic Square
Carmel, Indiana 46032
ATTN: Douglas C. Haney

City of Carmel
Mayor's Office
One Civic Square
Carmel, Indiana 46032
ATTN: The Honorable James Brainard

**TO DEI:**

Duke Energy Indiana, LLC
Ariane Johnson
Associate General Counsel
1000 E. Main Street
Plainfield, IN 46168

Duke Energy Indiana, LLC
Matt Koenig

Manager, Distribution Design
1000 E. Main Street
Plainfield IN 46168

**SECTION 5: GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, except for Indiana's laws regarding conflicts of law, and shall not be altered or otherwise amended except pursuant to an instrument in writing signed by both Parties. The Parties agree and acknowledge that, in the event a lawsuit is filed hereunder, each Party waives any right to a jury trial they may have, and further agree to file any such lawsuit in an appropriate court in Hamilton County, Indiana only and/or with the IURC, whichever is deemed applicable.

**SECTION 6: WAIVER**

Any delay or inaction on behalf of either Party in exercising or pursuing its rights and/or remedies hereunder, shall not operate to waive any such rights and/or remedies in the future, nor shall it affect the rights of such Party, in any way whatsoever, to require specific performance of the other Party under the terms of this Agreement, except as otherwise set forth in this Agreement.

**SECTION 7: NON-ASSIGNMENT**

Both Parties agree and acknowledge that it shall not assign or delegate its responsibilities and obligations set forth herein, nor shall pledge the terms and conditions of this Agreement, to another person or entity without prior written consent of the other Party.

**SECTION 8: SUCCESSOR AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective past and present heirs, executors, administrators, beneficiaries, representatives, subsidiaries, divisions, officers, officials, directors, shareholders, agents, employees, alter egos, successors and assigns.

**SECTION 9: AGREEMENT AS EVIDENCE**

This Agreement may be used as evidence in any subsequent proceeding in which either of the Parties alleges a breach of this Agreement, as well as any proceeding contemplated hereinunder.

**SECTION 10: ENTIRE AGREEMENT**

This Agreement constitutes and contains the entire agreement between the Parties concerning the transactions contemplated herein and supersedes all prior negotiations, proposed agreements and understandings, or representations, if any, written or oral, between the Parties. To the extent that any provision contained in this Agreement conflicts with any provision contained in any URA, the provision contained in this Agreement shall prevail.

**SECTION 11: REPRESENTATIONS AND WARRANTIES BY BOTH PARTIES**

Each Party represents and warrants that it is authorized to enter into this Agreement and that any person or entity that executes this Agreement on behalf of such Party has the authority to bind such Party, or the Party which they represent. The Parties further warrant that they have read this Agreement and fully understand it, have had an opportunity to obtain the advice and assistance of counsel of their choosing throughout the negotiation of the same, and enter the same freely, voluntarily, and without any duress, undue influence or coercion.

**SECTION 12: SEVERABILITY**

In the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be excised, restricted, or otherwise modified to the extent necessary to render the same valid and enforceable.

**SECTION 13: SECTION HEADINGS**

The section headings herein have been used as a convenience of reference only, and shall in no way modify or restrict any of the terms or provisions hereof.

**SECTION 14: COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF,** the Parties have signed and executed this Agreement on the dates below their respective signature(s), or the signature(s) of their representative(s). The effective date of this Agreement shall be the date of the last signature affixed hereto.

**CITY OF CARMEL, INDIANA ("CARMEL")**

**BY:** The Honorable James C. Brainard

James C. Brainard, Mayor, by Ashley M. Ulbricht, Carmel City Attorney

INSERT NAME HERE
INSERT TITLE HERE

4-15-2020

Date

**DUKE ENERGY INDIANA, LLC ("DEI")**

**BY:**

Donald A. McDuffy

Donald A McDuffy
Director, Asset Design
Indiana Customer Delivery

Date