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161st Street and Carey Road Roundabout Duke Energy Utility Reimbursement Agreement

The agreement is for reimbursement to Duke Energy to relocate their electric facilities for the upcoming 161st Street and Carey Road Roundabout project slated to start this spring. Duke Energy is currently located within an exclusive easement. In addition to being located within an easement, some of their facilities will be buried instead of being aerial which will add some extra cost.

The estimated cost of relocation of the electric lines per this agreement is \$775,000. Per Section II of the agreement, Duke Energy will submit supporting documentation and an invoice of the actual cost of the relocation. Construction is expected to take three weeks and will begin in late March. The construction start date is being reviewed by Duke Energy.

The attached agreement has been reviewed and comments have been given to Duke Energy. The Westfield Public Works Department recommends that the Board of Public Works and Safety authorize the Director of Public Works to enter into this agreement once the final version has been agreed to by both parties in the amount of not to exceed \$775,000.

Public Works Department

(317) 804-3100 office
(317) 804-3190 fax

2706 East 171st Street
Westfield, IN 46074
westfield.in.gov

UTILITY REIMBURSEMENT AGREEMENT
(Local Government – Easement/Road To Road - Evergreen)
(City of Westfield 161St and Carey Rd Electric
Relocation)
(Revised 8/13/12)

THIS AGREEMENT, made and effective this _____ day of _____, 2013, is by and between **Duke Energy Indiana, Inc.**, an Indiana electric public utility corporation (hereinafter referred to as "DEI"), and **City of Westfield** in Indiana (hereinafter referred to as "the Local Government").

WITNESSETH:

WHEREAS, as an Indiana public utility, DEI has the right under Indiana law to construct, operate and maintain its utility facilities upon Indiana public road right of way including but not limited to, **Carey Road** in **Westfield**, Indiana; and

WHEREAS, DEI has constructed and now operates and maintains certain electric line facilities near or adjoining **Carey Rd**, all of which are more particularly depicted or described on the attached Exhibit "A" (hereinafter referred to as "the Utility Facilities"); and

WHEREAS, the Local Government needs to make certain improvements to or within **Carey Rd** and the Local Government and DEI have determined that the Utility Facilities will need to be relocated before this improvement can be made by the Local Government; and

WHEREAS, the Local Government has acquired or will acquire at the expense of the Local Government, a relocation area which is located upon public road right of way, which area DEI has determined is suitable and is hereinafter referred to as "said relocation area"; and

WHEREAS, the Local Government has requested DEI to relocate the Utility Facilities to said relocation area, as depicted or described on Exhibit "A," and

WHEREAS, DEI is willing to relocate the Utility Facilities to said relocation area; provided that the Local Government reimburses DEI for the costs incurred by DEI so to do, and for any costs actually incurred by DEI in the future in the event the Utility Facilities need to be adjusted, removed, supported, altered, and/or relocated at any time or times (a) for another highway improvement project and/or (b) for any other project of the Local Government or other governmental entity; and

WHEREAS, the Local Government is willing to reimburse DEI for such present and future costs subject to the terms and conditions contained herein.

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

SECTION I. DEI will relocate the Utility Facilities to said relocation area, as depicted or described on Exhibit "A" (hereinafter referred to as "the Work"). The preliminary estimated cost thereof is **\$ 775,000 Seven Hundred and Seventy Five Thousand**.

SECTION II. The Local Government shall reimburse DEI for the actual costs incurred by DEI to perform the Work within forty five (45) days after receiving a written, itemized statement from DEI. Said statement 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 the Local Government to support such invoice. DEI shall have the right to submit such statements for progress payments as the Work proceeds.

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

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

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

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

(d) the Local Government and DEI have executed this Agreement.

SECTION IV. The Local Government shall also reimburse DEI for any costs actually incurred by DEI in the future in the event the Utility Facilities need to be adjusted, removed, supported, altered, and/or relocated at any time or times (a) for another Local Government highway improvement project and/or (b) for any other project of the Local Government or other governmental entity.

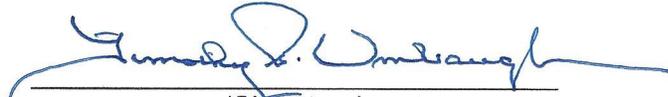
SECTION V. DEI shall not discriminate against any employee or applicant for employment, in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

SECTION VI. DEI shall indemnify and hold harmless the Local Government 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 Work (hereafter "Claim"); provided, however, that where the Local Government 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 the Local Government.

(Remainder of page intentionally left blank.)

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, INC.



(Signature)

Timothy P. Umbaugh
(Name, Printed or Typed)

Manager, Distribution Design
(Position)

City of Westfield
Kenneth Alexander
Director of Public Works Department
2706 East 171st Street
Westfield, IN 46074

By: _____

Printed Name: _____

Printed Title: _____

Dated: _____

By: _____

Printed Name: _____

Printed Title: _____

Dated: _____

By: _____

Printed Name: _____

Printed Title: _____

Dated: _____

Attest:

-Treasurer