

Draft

UTILITY REIMBURSEMENT AGREEMENT
Intersection at Cumberland Road and Kent Ave.

THIS AGREEMENT, made and effective this _____ day of _____, 2009, is by and between **Duke Energy Indiana, Inc.**, an Indiana electric public utility corporation (hereinafter referred to as "DEI"), and the **City of West Lafayette**, 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, the Local Government's **Intersection at Cumberland Road and Kent Avenue** in West Lafayette, Indiana; and

WHEREAS, DEI has constructed and now operates and maintains certain electric line facilities upon and/or along the **Intersection at Cumberland Road and Kent Avenue**, all of which are more particularly described on the attached Exhibit "A" (hereinafter referred to as "the Utility Facilities"); and

WHEREAS, the Local Government needs to make certain improvements to the **Intersection at Cumberland Road and Kent Avenue**, 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 on the public road right of way of the **Intersection at Cumberland Road and Kent Avenue** for the Utility Facilities, 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 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 actually incurred by DEI so to do (with the preliminary estimated cost as hereinafter described, being paid to DEI by the Local Government before DEI commences "the Work" as such term is hereinafter defined), 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 with its regular construction or maintenance crew and personnel, at its standard schedule of wages and working hours, or by an approved contractor, will relocate the Utility Facilities to said relocation area, as described on Exhibit "A" (hereinafter referred to as "the Work"). The preliminary estimated cost thereof is **\$54,869** as shown on the attached Exhibit "B."

SECTION II. The Local Government shall reimburse DEI for the actual costs incurred by DEI to perform the Work within thirty (30) days after receiving a written, itemized statement from DEI. 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 the Work has been authorized and funds are available to reimburse DEI,

(b) the Local Government has denoted the public road right-of-way line 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 as reasonably determined by DEI, for the entire length of the project

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

(e) written notice has been given to DEI by the Local Government that all right of way for the project has been acquired.

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. Notwithstanding anything to the contrary contained in this Agreement, to the extent any of the Work involves the relocation by DEI of Utility Facilities which are not subject to reimbursement by the Local Government, the Local Government's obligation herein to reimburse DEI for future relocation costs shall not apply.

SECTION V. The existing facilities are/are not located on public right-of-way. If such facilities are located on property, other than public right-of-way, and the Utility either has an easement thereon or a continuing right to maintain the facilities in that location, the Utility, for and in consideration of this agreement, shall subordinate the Utility's rights by executing an individual subordination agreement.

SECTION VI. DEI, and its contractor and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to her/his hire, tenure, terms, conditions or

privileges of employment or any matter directly or indirectly related to employment because of her/his race, color, religion, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

SECTION VII. 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.

SECTION VIII. Notwithstanding any term herein to the contrary, in the event litigation is commenced to enforce any term or condition of this Agreement, the prevailing party shall be entitled to reasonable litigation costs including reasonable attorney fees.

[Signature page follows.]

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)

(Name, Printed or Typed)

(Position)

CITY OF WEST LAFAYETTE

BOARD OF PUBLIC WORKS AND SAFETY

By: _____

Mayor John R. Dennis, President

Dated: _____

By: _____

Sana G. Booker, Member

Dated: _____

By: _____

Bradley W. Marley, Member

Dated: _____

Attest:

Judith C. Rhodes, Clerk-Treasurer

Dated: _____

