



# Board of Public Works and Safety

## Agenda Item

## Cover Sheet

---

**MEETING DATE:** July 23, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

**ITEM #:** 9

**INITIATED BY:** Andrew Rodewald

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



# IN01 LIGHTING SERVICE AGREEMENT

Customer Information:  
CITY OF NOBLESVILLE  
ARODEWALD@NOBLESVILLE.IN.US

Project Information:  
Oakmont RDB temp lights  
Indiana

..

Account Number:

Work Order Number:  
54110620

Duke Energy Representative Contact Info:  
Joshua Marion

This Lighting Service Agreement is hereby entered into this 18th day of June, 2024, between Duke Energy (hereinafter called the "Company") and CITY OF NOBLESVILLE (hereinafter referred to as the "Customer") for lighting service at the above location(s). The Customer agrees to receive and pay for lighting service from the Company in accordance with the rates, terms and provisions of the Company's Rate Schedule UOLS and Service Regulations, or its successor, as the same is on file with the Indiana Public Service Commission (INDIANA UTILITY REGULATORY COMMISSION) and as may be amended and subsequently filed with the INDIANA UTILITY REGULATORY COMMISSION.

To the extent there is any conflict between this Agreement and the Lighting Service Rate Schedule, the Lighting Service Rate Schedule shall control. In the event of termination by the Customer during the initial term of this agreement under this rate schedule or upon early termination of service under this schedule, the customer agrees to pay remaining terms of this agreement as delegated by the INDIANA UTILITY REGULATORY COMMISSION.

The date of *initiation* of service shall be defined as the date the first light(s) is energized. It is further agreed that Duke Energy reserves the right to discontinue service and remove any Duke Energy-owned facilities from the Customers premise if the Customer violates any of the terms of the Service Regulations, Rate Schedule or this Agreement.

Customer Signature 

Date Signed 7/10/24

Duke Energy Representative Joshua Marion

Date Signed 06/18/2024



Summary of Estimated Charges					
Minimum Service Term	Initial Monthly Cost	Total Early Termination Charges	Total One Time Charges	Total Cost for Initial term	Ongoing Monthly Charge post Term
0 Years (0) Months	24.81	0.00	6864.13	6864.13	24.81
1 Years (12) Months	623.00	0.00	0.00	7476.00	24.81
3 Years (36) Months	216.41	0.00	0.00	7790.76	24.81
5 Years (60) Months	147.26	0.00	0.00	8835.60	24.81
7 Years (84) Months	117.85	0.00	0.00	9899.40	24.81
10 Years (120) Months	96.09	0.00	0.00	11530.80	24.81

Monthly Base Charges							
Service Required	Quantity	Product Description Fixtures and Poles	Equipment Rental**	Maintenance	Energy	Unit Total	Sub-Total
I	003	LFIX-RW-LED-150-GRAY-III-M	0.00	4.61	3.66	8.27	24.81
		<b>Rental, Maintenance, F&amp;E Totals:</b>	\$0	\$13.83	\$10.98		
<b>Estimated Change to Base Monthly Charge Total</b>							<b>\$24.81</b>

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.



### OUTDOOR LIGHTING UOLS SERVICE AGREEMENT

PROPOSALS ARE VALID FOR 90 DAYS FROM THE DATE ON THE AGREEMENT AND MUST BE SIGNED AND RETURNED BEFORE THE PROPOSAL EXPIRATION DATE.

After the Initial Term expires, the monthly equipment charges will no longer be reflected on the monthly bill, though and energy and maintenance charges continue for the life of the lighting system covered by this agreement.

See Section I, below for further lighting equipment and cost detail. Requests for changes in number of lights and poles, pole locations, equipment or other requests will result in a recalculation of the amounts above. Upon request the location information or drawing will be provided for the proposed placement of this lighting equipment.

IN WITNESS WHEREOF, the parties hereto have caused two copies of this Agreement to be executed by a duly authorized representative(s), effective the Current Date first written above. This Lighting Service Agreement ("Agreement") is made and entered into by the subsidiary of Duke Energy Corporation, a Delaware corporation, named above (hereafter, "Company"). Neither Duke Energy Corp. nor any of its other affiliated companies are parties to this Agreement.

**WITNESSETH:**

**WHEREAS,** Customer desires to have: a Company-owned outdoor lighting system ("System"), on designated property; and

**WHEREAS,** Company has the ability to own, install, operate and maintain an outdoor lighting system.

**NOW THEREFORE,** in consideration of the mutual covenants contained herein, the parties agree as follows:

**SECTION I. – EQUIPMENT AND INSTALLATION**

- 1.1 In accordance with conditions set forth herein, Company agrees to install for Customer all necessary equipment to provide, operate and maintain an outdoor lighting system. The cost of any additional electrical distribution facilities required to provide energy to the System may or may not be included in the monthly terms of this Agreement according to Company discretion.
- 1.3 Tariff riders and sales tax are not included, which may cause the amounts quoted to fluctuate.

**A. ENERGY USAGE – BASED ON UTILITY REGULATORY COMMISSION APPROVED RATES**

<b>**CALCULATION FOR ESTIMATING UNMETERED ENERGY USAGE</b>	
Impact Watts = the energy used by the lamp watts plus ballast watts.	
<ul style="list-style-type: none"> <li>• Impact watts times estimated Annual Burn Hours as shown in lines above equal annual watt hours.</li> <li>• Annual watt hours divided by 1000 hours equal annual kilowatt hours (kWh).</li> </ul>	<ul style="list-style-type: none"> <li>• Annual kWh divided by twelve (12) months equals monthly kWh.</li> <li>• Monthly kWh times current rate per kWh equals the monthly dollar amount for each item.</li> </ul>

**LIGHTING LAYOUT DESIGN DISCLAIMER**

*Company will install the System in accordance with Customer's specifications concerning the design and layout (including pole locations, number, and types of lights). Customer is responsible for all aspects of the design and layout of the System. Customer understands that its design and layout of the System may not be in accordance with minimum foot-candle and lighting uniformity standards. Therefore, Customer agrees to release, indemnify, hold harmless, and defend Company (including Company's parent, subsidiary and affiliate companies and all of their respective employees, officers, directors and agents) from and against any and all claims, demands, causes of action, liabilities, losses, damages, and/or expenses resulting from (or alleged to result from) the design and/or layout of the System, including damage to or destruction of personal property, personal injuries including death, and reasonable attorneys' fees.*

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

**SECTION II. – CUSTOMER OPTIONS FOR SYSTEM OPERATING HOURS**

- 2.1 HOURS OF OPERATION are the typical dusk-to-dawn photoelectric cell automatically operated System or as prescribed by a schedule agreed upon by the company and the customer. Lights turn on approximately 1/2 hour after sunset and shut-off 1/2 hour before sunrise. This may be a monthly estimated energy usage based on luminaire impact wattage and lamp source equally over twelve months (See Section I - B, above) or metered using actual energy usage plus a monthly meter charge or based upon a calculation related to an agreed upon schedule of usage and the luminaire impact wattage.

**SECTION III. – ENERGY USAGE COST CALCULATION**

- 3.1 Except as otherwise provided in this Agreement, Customer shall pay Company the monthly energy charges. Monthly charges are based on estimated unmetered charges using the calculation methods shown on Page 3 of this Agreement and adding any energy tariff riders and applicable sales tax. Both unmetered and metered outdoor lighting energy usage charges are based on the per kilowatt hour amount approved by the appropriate State Utility Commission.
- 3.2 The "Schedule of Rates, Classifications, Rules and Regulations for Electric Service", and/or General Terms and Conditions of the Company, and all amendments thereto, are filed with and approved by the appropriate State regulatory entity, (the "Commission") and shall be deemed a part of this Agreement as if fully set forth herein.

**SECTION IV. – SYSTEM MAINTENANCE**

- 4.1 Normal maintenance includes the replacement or repair of any item included in the System except seasonal outlets. Maintenance is performed after notification from the Customer that a problem exists and/or during a Company scheduled maintenance cycle. Company will stock only the most common equipment; acquisition of some repair parts could cause a delay in permanent repair.
- 4.2 Normal maintenance covers ordinary wear and tear with proper use of the System. Repairs or replacements requested as a result Customer caused damage will be performed on a time and material cost basis, in which instance an estimate of costs will be provided to the Customer before the work begins. Company reserves the right to charge Customer for repair costs incurred due to vandalism.
- 4.3 Maintenance does not include partial or full System replacement or major repairs due to System age. Different types of lighting equipment have different life spans. Lighting equipment suppliers may also discontinue manufacture of certain equipment. End of life for a System will be determined by the Company.
- 4.4 Company reserves the right to update or modify the monthly maintenance charges to reflect changes in Company costs for materials and labor no more often than every three years on a Company assigned schedule, which may not coincide with the term of this Agreement.
- 4.5 Company reserves the right to charge a fee equal to a minimum of one-hour labor and transportation costs for trips to disconnect and reconnect lights in a Company-owned lighting System when requested to do so more times than the Company deems necessary.

**SECTION V. – PAYMENT**

- 5.1 Customer hereby agrees to pay Company the monthly costs set forth in accordance with the applicable tariff rate for the energy provided for the term of this Agreement. The estimated monthly amount due are summarized on Page 2 of this agreement and are current at the time the Agreement is initiated. A monthly bill will be rendered and due each month in accordance with the applicable tariff rate and payment rules. Any Customer charge that is not paid in full on or before its due date, shall incur a late fee.
- 5.2 Should any change in the energy usage monthly charges be ordered by the Commission, then payments by Customer to Company for this service shall thereafter be made upon the basis of such new rates as changed and approved by the Commission.

**SECTION VI. – TERM OF AGREEMENT**

- 6.1 Service under this Agreement shall commence as soon as practicable after the System is installed and operational. The Company shall notify Customer in writing as to the date on which service will begin.
- 6.2 The initial term of this Agreement shall be in accordance with the Option indicated on Page 2 of this Agreement ("Initial Term"). After the Initial Term, this Agreement shall continue in force and effective in successive automatic one-year extensions unless terminated by either party upon sixty (60) days written notice.

**SECTION VII. – OTHER TERMS AND CONDITIONS**

- 7.1 Other Terms and Conditions set forth in Exhibit "B" hereof are incorporated herein by reference and made a part of this Agreement.
- 7.2 This Agreement constitutes the final written expression between the parties. It is a complete and exclusive statement and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the System. However, nothing herein shall preclude either party from commencing an action for unpaid bills, other damages, or breach of prior agreements during the time they were in effect.
- 7.3 This Agreement, the construction of this Agreement, all rights and obligations between the parties to this Agreement, and any and all claims arising out of or related to the subject matter of this Agreement (including tort claims), shall be governed by the laws of the State in which the service is rendered without regard to its conflict of laws provisions.



**EXHIBIT 'B' - OTHER TERMS AND CONDITIONS**

1. All System facilities installed by Company under this Agreement are and shall remain the property of Company. The termination of this Agreement for any reason whatsoever shall not in any way affect such ownership by Company, deprive Company of the right either to remove any or all property comprising the System or any part thereof or to use the same in or in connection with the rendering of other service by Company.
2. If Customer requests part or all of the System's removal before the end of the System's useful life, including by reason of termination of this Agreement, Customer must pay Company's unrecovered costs of the System minus any salvage value, to be determined at the sole discretion Company, plus System removal costs.
3. The obligations of Customer to pay the monthly invoice and any applicable late fees or any amount due and owing to Company as a result of this Agreement or in connection with the rights and privileges granted hereby, are independent of the liabilities or obligations of Company hereunder. Customer shall make all such payments due to Company without any deductions, setoffs or counterclaims against such payments on account of any alleged breach or default by, or claims against, the Company pursuant to this Agreement or otherwise or on account of any claims against or default by any third party.
4. Company's installation of the System is contingent upon obtaining adequate easements and rights-of-way, if necessary, and Customer agrees to assist the Company when necessary in obtaining easements or rights-of-way which shall include permission to install and maintain service lines and facilities required for serving and providing the System.
5. Company is an independent contractor and not an agent or employee of Customer and nothing contained in this Agreement shall be so construed as to justify a finding of the existence of any relationship between Company and Customer inconsistent with that status. Company shall have exclusive control of and responsibility for its labor relations.
6. Company does not warrant nor guarantee the safety of Customer or any third party, nor does it warrant or guarantee the security of Customer's property or any third party property, lighting levels, or uniformity of lighting as a result of Customer's use of the System. Company is not liable for any injury to Customer, or any persons or property arising out of the System use other than that arising from the sole negligence of the company. COMPANY EXPLICITLY DISCLAIMS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EITHER EXPRESSED OR IMPLIED, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.
7. If a breach or default occurs, the non-breaching party shall provide the breaching party with a thirty (30) day written notice to cure such default or breach, or if the defect cannot be cured within thirty (30) days, the breaching party shall nonetheless commence to cure such defect and shall, in good faith, complete such cure in as timely and expeditious manner as is feasible in the circumstances. If the breaching party fails to cure or to commence the cure of the defect within the prescribed time frame set forth herein, the non-breaching party, at its sole discretion, shall provide notice to the breaching party of the immediate termination of this Agreement. Events beyond Company's control, including but not limited to acts of nature, electricity outages, and inability to obtain needed replacement parts, shall not constitute breaches of this Agreement.
8. Customer desiring a Company-installed System on a public rights-of-way or on other property not under customer's jurisdiction must provide the Company with written permission from the entity with legal jurisdiction over that right-of-way or property before installation will begin. Customer must reimburse Company for costs associated with obtaining easements.
9. Company reserves the right to refuse to install Company equipment on another's property, however, any Company agreement to install System luminaires or other Company facilities on poles or structures owned by a third entity is contingent upon receiving written consent for such installation from that entity. Customer will be required to reimburse the Company for monthly fees charged for pole contacts for System attachments on poles or structures not owned by the Company, (i.e., owned by other utilities or entities). This fee will be imposed only when contacting or modifying existing poles to allow for clearances required for the System equipment.
10. Company shall not be liable for any claims, demands, cause of action, liabilities, loss, damage or expense of whatever kind or nature, including attorney fees, incurred by Customer for actions involving a structure not Company-owned on which the Company has placed Company-owned equipment at Customer request. Additionally, the Company will not be responsible for any repairs needed by the structure that is not owned by Company. If the structure becomes unsuitable, or unsafe to support Company-owned equipment the Company retains the right to remove the equipment from the structure. If Company equipment is removed under these conditions Customer will owe Company a pro-rated amount for the removed equipment plus removal costs minus salvage value.
11. When changes are requested by Customer at any time after the System is installed and before the normal end of System life, Company will evaluate and estimate the costs of the changes. The changes will be made after the Customer pays the agreed upon amount if any to make changes. Changes include such matters as relocating poles, changing luminaire styles (post top, cobrahead, floodlight), their locations, wattage, and lamp source (e.g., metal halide, high pressure sodium). Any such agreed upon changes will be documented either by a new or an amended Agreement. New equipment added to the System will require a new Agreement.
12. If any part, term, or provision of this Agreement is adjudged by a court of competent jurisdiction to be contrary to the law governing this Agreement, the validity of the remaining parts, terms, and provisions shall not be affected thereby.
13. This Agreement, and all the terms and provisions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, personal representatives, and/or permitted assigns.
14. Each party to this Agreement represents that it is sophisticated and capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement.
15. No delay of or omission in the exercise of any right, power or remedy accruing to any party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of any future exercise of any right, power or remedy.
16. Neither party shall assign this Agreement without the prior written consent of the other party, which consent, if given shall not relieve the party of making such assignment from full responsibility for the fulfillment of its obligations under this Agreement. PROVIDED, THAT the Company may assign this Agreement to its parent or any subsidiary entity or to an affiliate.

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

## Funding Verification/Encumbrance Request Form

Date to be submitted to BoW / Park Board: 7/23/24 (put N/A if not submitting to BoW/Park Board)

Vendor name: Duke Energy Indiana, LLC

Vendor Address: 1717 1000 East Main Street, Plainfield, IN 46168

Brief description of purchase: Duke Energy Temp Lighting - SR 38 & Whitcomb/Oakmont Roundabout

**Source of Funding:**

- Current Year Operational Budget
- Subsequent Year Operational Budget <sup>1</sup>
- Loan or debt proceeds
- Non-Appropriated Fund
- Funding not yet finalized (attach explanation) <sup>2</sup>:

1) Note: This option may only be selected AFTER the adoption of the subsequent year budget. OFA will create a PO after the start of the next year. If contract details change in between form submission and the start of the year, contact OFA Staff.

2) This option may only be selected in unusual circumstances. An additional FVF will need to be submitted to OFA once funding source has been determined. OFA will not create a PO until this follow-up form has been submitted.

Fund #	251
Department #	023-026
Project # (NA if no project #)	023.2102 026.2011

	Expense Object #	Amount
#1	366.200	\$ 6,864.13
#2		
#3		
#4		
#5		

Are you requesting that a Purchase Order (PO) be created for this expenditure?

- Yes Select for all purchases/contracts that will not be paid immediately
- No Select ONLY if department plans to initiate payment immediately

The Department certifies that sufficient appropriation authority exists in the stated fund and expense series to obligate the expense for future payment.

Department Director

[Signature]  
(Signature)

AJLISON KRUPSKI  
(Printed Name)

7/15/24  
(Date)

Please email completed form to [OFAbudget@noblesville.in.us](mailto:OFAbudget@noblesville.in.us).

**FOR OFFICE OF FINANCE AND ACCOUNTING USE ONLY**

**OFA Action Taken**

- Purchase Order Created
- Reviewed Availability of funds (Contract/Purchase of over \$50k or paid with debt proceeds only)
- No Action Taken (Department should still include this form in purchase/contract approval submission)

PO # (if applicable): 240252

OFA Signature Caitlin Moss

Comments: \_\_\_\_\_

Initials: HT

Date: 7/16/24







<b>Summary of Estimated Charges</b>					
<b>Minimum Service Term</b>	<b>Initial Monthly Cost</b>	<b>Total Early Termination Charges</b>	<b>Total One Time Charges</b>	<b>Total Cost for Initial term</b>	<b>Ongoing Monthly Charge post Term</b>
0 Years (0) Months	24.81	0.00	6864.13	6864.13	24.81
1 Years (12) Months	623.00	0.00	0.00	7476.00	24.81
3 Years (36) Months	216.41	0.00	0.00	7790.76	24.81
5 Years (60) Months	147.26	0.00	0.00	8835.60	24.81
7 Years (84) Months	117.85	0.00	0.00	9899.40	24.81
10 Years (120) Months	96.09	0.00	0.00	11530.80	24.81

<b>Monthly Base Charges</b>							
<b>Service Required</b>	<b>Quantity</b>	<b>Product Description Fixtures and Poles</b>	<b>Equipment Rental**</b>	<b>Maintenance</b>	<b>Energy</b>	<b>Unit Total</b>	<b>Sub-Total</b>
I	003	LFIX-RW-LED-150-GRAY-III-M	0.00	4.61	3.66	8.27	24.81
		<b>Rental, Maintenance, F&amp;E Totals:</b>	\$0	\$13.83	\$10.98		
<b>Estimated Change to Base Monthly Charge Total</b>							<b>\$24.81</b>

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.



**OUTDOOR LIGHTING UOLS SERVICE AGREEMENT**

PROPOSALS ARE VALID FOR 90 DAYS FROM THE DATE ON THE AGREEMENT AND MUST BE SIGNED AND RETURNED BEFORE THE PROPOSAL EXPIRATION DATE.

After the Initial Term expires, the monthly equipment charges will no longer be reflected on the monthly bill, though and energy and maintenance charges continue for the life of the lighting system covered by this agreement.

See Section I, below for further lighting equipment and cost detail. Requests for changes in number of lights and poles, pole locations, equipment or other requests will result in a recalculation of the amounts above. Upon request the location information or drawing will be provided for the proposed placement of this lighting equipment.

IN WITNESS WHEREOF, the parties hereto have caused two copies of this Agreement to be executed by a duly authorized representative(s), effective the Current Date first written above. This Lighting Service Agreement ("Agreement") is made and entered into by the subsidiary of Duke Energy Corporation, a Delaware corporation, named above (hereafter, "Company"). Neither Duke Energy Corp. nor any of its other affiliated companies are parties to this Agreement.

**WITNESSETH:**

**WHEREAS**, Customer desires to have: a Company-owned outdoor lighting system ("System"), on designated property; and

**WHEREAS**, Company has the ability to own, install, operate and maintain an outdoor lighting system.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

**SECTION I. – EQUIPMENT AND INSTALLATION**

- 1.1 In accordance with conditions set forth herein, Company agrees to install for Customer all necessary equipment to provide, operate and maintain an outdoor lighting system. The cost of any additional electrical distribution facilities required to provide energy to the System may or may not be included in the monthly terms of this Agreement according to Company discretion.
- 1.3 Tariff riders and sales tax are not included, which may cause the amounts quoted to fluctuate.

**A. ENERGY USAGE – BASED ON UTILITY REGULATORY COMMISSION APPROVED RATES**

**\*\*CALCULATION FOR ESTIMATING UNMETERED ENERGY USAGE**

Impact Watts = the energy used by the lamp watts plus ballast watts.

- Impact watts times estimated Annual Burn Hours as shown in lines above equal annual watt hours.
- Annual kWh divided by twelve (12) months equals monthly kWh.
- Annual watt hours divided by 1000 hours equal annual kilowatt hours (kWh).
- Monthly kWh times current rate per kWh equals the monthly dollar amount for each item.

**LIGHTING LAYOUT DESIGN DISCLAIMER**

*Company will install the System in accordance with Customer's specifications concerning the design and layout (including pole locations, number, and types of lights). Customer is responsible for all aspects of the design and layout of the System. Customer understands that its design and layout of the System may not be in accordance with minimum foot-candle and lighting uniformity standards. Therefore, Customer agrees to release, indemnify, hold harmless, and defend Company (including Company's parent, subsidiary and affiliate companies and all of their respective employees, officers, directors and agents) from and against any and all claims, demands, causes of action, liabilities, losses, damages, and/or expenses resulting from (or alleged to result from) the design and/or layout of the System, including damage to or destruction of personal property, personal injuries including death, and reasonable attorneys' fees.*

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

**SECTION II. – CUSTOMER OPTIONS FOR SYSTEM OPERATING HOURS**

- 2.1 HOURS OF OPERATION are the typical dusk-to-dawn photoelectric cell automatically operated System or as prescribed by a schedule agreed upon by the company and the customer. Lights turn on approximately 1/2 hour after sunset and shut-off 1/2 hour before sunrise. This may be a monthly estimated energy usage based on luminaire impact wattage and lamp source equally over twelve months (See Section I - B, above) or metered using actual energy usage plus a monthly meter charge or based upon a calculation related to an agreed upon schedule of usage and the luminaire impact wattage.

**SECTION III. – ENERGY USAGE COST CALCULATION**

- 3.1 Except as otherwise provided in this Agreement, Customer shall pay Company the monthly energy charges. Monthly charges are based on estimated unmetered charges using the calculation methods shown on Page 3 of this Agreement and adding any energy tariff riders and applicable sales tax. Both unmetered and metered outdoor lighting energy usage charges are based on the per kilowatt hour amount approved by the appropriate State Utility Commission.
- 3.2 The "Schedule of Rates, Classifications, Rules and Regulations for Electric Service", and/or General Terms and Conditions of the Company, and all amendments thereto, are filed with and approved by the appropriate State regulatory entity, (the "Commission") and shall be deemed a part of this Agreement as if fully set forth herein.

**SECTION IV. – SYSTEM MAINTENANCE**

- 4.1 Normal maintenance includes the replacement or repair of any item included in the System except seasonal outlets. Maintenance is performed after notification from the Customer that a problem exists and/or during a Company scheduled maintenance cycle. Company will stock only the most common equipment; acquisition of some repair parts could cause a delay in permanent repair.
- 4.2 Normal maintenance covers ordinary wear and tear with proper use of the System. Repairs or replacements requested as a result Customer caused damage will be performed on a time and material cost basis, in which instance an estimate of costs will be provided to the Customer before the work begins. Company reserves the right to charge Customer for repair costs incurred due to vandalism.
- 4.3 Maintenance does not include partial or full System replacement or major repairs due to System age. Different types of lighting equipment have different life spans. Lighting equipment suppliers may also discontinue manufacture of certain equipment. End of life for a System will be determined by the Company.
- 4.4 Company reserves the right to update or modify the monthly maintenance charges to reflect changes in Company costs for materials and labor no more often than every three years on a Company assigned schedule, which may not coincide with the term of this Agreement.
- 4.5 Company reserves the right to charge a fee equal to a minimum of one-hour labor and transportation costs for trips to disconnect and reconnect lights in a Company-owned lighting System when requested to do so more times than the Company deems necessary.

**SECTION V. – PAYMENT**

- 5.1 Customer hereby agrees to pay Company the monthly costs set forth in accordance with the applicable tariff rate for the energy provided for the term of this Agreement. The estimated monthly amount due are summarized on Page 2 of this agreement and are current at the time the Agreement is initiated. A monthly bill will be rendered and due each month in accordance with the applicable tariff rate and payment rules. Any Customer charge that is not paid in full on or before its due date, shall incur a late fee.
- 5.2 Should any change in the energy usage monthly charges be ordered by the Commission, then payments by Customer to Company for this service shall thereafter be made upon the basis of such new rates as changed and approved by the Commission.

**SECTION VI. – TERM OF AGREEMENT**

- 6.1 Service under this Agreement shall commence as soon as practicable after the System is installed and operational. The Company shall notify Customer in writing as to the date on which service will begin.
- 6.2 The initial term of this Agreement shall be in accordance with the Option indicated on Page 2 of this Agreement ("Initial Term"). After the Initial Term, this Agreement shall continue in force and effective in successive automatic one-year extensions unless terminated by either party upon sixty (60) days written notice.

**SECTION VII. – OTHER TERMS AND CONDITIONS**

- 7.1 Other Terms and Conditions set forth in Exhibit "B" hereof are incorporated herein by reference and made a part of this Agreement.
- 7.2 This Agreement constitutes the final written expression between the parties. It is a complete and exclusive statement and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the System. However, nothing herein shall preclude either party from commencing an action for unpaid bills, other damages, or breach of prior agreements during the time they were in effect.
- 7.3 This Agreement, the construction of this Agreement, all rights and obligations between the parties to this Agreement, and any and all claims arising out of or related to the subject matter of this Agreement (including tort claims), shall be governed by the laws of the State in which the service is rendered without regard to its conflict of laws provisions.

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

**EXHIBIT 'B' - OTHER TERMS AND CONDITIONS**

1. All System facilities installed by Company under this Agreement are and shall remain the property of Company. The termination of this Agreement for any reason whatsoever shall not in any way affect such ownership by Company, deprive Company of the right either to remove any or all property comprising the System or any part thereof or to use the same in or in connection with the rendering of other service by Company.
2. If Customer requests part or all of the System's removal before the end of the System's useful life, including by reason of termination of this Agreement, Customer must pay Company's unrecovered costs of the System minus any salvage value, to be determined at the sole discretion of Company, plus System removal costs.
3. The obligations of Customer to pay the monthly invoice and any applicable late fees or any amount due and owing to Company as a result of this Agreement or in connection with the rights and privileges granted hereby, are independent of the liabilities or obligations of Company hereunder. Customer shall make all such payments due to Company without any deductions, setoffs or counterclaims against such payments on account of any alleged breach or default by, or claims against, the Company pursuant to this Agreement or otherwise or on account of any claims against or default by any third party.
4. Company's installation of the System is contingent upon obtaining adequate easements and rights-of-way, if necessary, and Customer agrees to assist the Company when necessary in obtaining easements or rights-of-way which shall include permission to install and maintain service lines and facilities required for serving and providing the System.
5. Company is an independent contractor and not an agent or employee of Customer and nothing contained in this Agreement shall be so construed as to justify a finding of the existence of any relationship between Company and Customer inconsistent with that status. Company shall have exclusive control of and responsibility for its labor relations.
6. Company does not warrant nor guarantee the safety of Customer or any third party, nor does it warrant or guarantee the security of Customer's property or any third party property, lighting levels, or uniformity of lighting as a result of Customer's use of the System. Company is not liable for any injury to Customer, or any persons or property arising out of the System use other than that arising from the sole negligence of the company. COMPANY EXPLICITLY DISCLAIMS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EITHER EXPRESSED OR IMPLIED, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.
7. If a breach or default occurs, the non-breaching party shall provide the breaching party with a thirty (30) day written notice to cure such default or breach, or if the defect cannot be cured within thirty (30) days, the breaching party shall nonetheless commence to cure such defect and shall, in good faith, complete such cure in as timely and expeditious manner as is feasible in the circumstances. If the breaching party fails to cure or to commence the cure of the defect within the prescribed time frame set forth herein, the non-breaching party, at its sole discretion, shall provide notice to the breaching party of the immediate termination of this Agreement. Events beyond Company's control, including but not limited to acts of nature, electricity outages, and inability to obtain needed replacement parts, shall not constitute breaches of this Agreement.
8. Customer desiring a Company-installed System on a public rights-of-way or on other property not under customer's jurisdiction must provide the Company with written permission from the entity with legal jurisdiction over that right-of-way or property before installation will begin. Customer must reimburse Company for costs associated with obtaining easements.
9. Company reserves the right to refuse to install Company equipment on another's property, however, any Company agreement to install System luminaires or other Company facilities on poles or structures owned by a third entity is contingent upon receiving written consent for such installation from that entity. Customer will be required to reimburse the Company for monthly fees charged for pole contacts for System attachments on poles or structures not owned by the Company, (i.e., owned by other utilities or entities). This fee will be imposed only when contacting or modifying existing poles to allow for clearances required for the System equipment.
10. Company shall not be liable for any claims, demands, cause of action, liabilities, loss, damage or expense of whatever kind or nature, including attorney fees, incurred by Customer for actions involving a structure not Company-owned on which the Company has placed Company-owned equipment at Customer request. Additionally, the Company will not be responsible for any repairs needed by the structure that is not owned by Company. If the structure becomes unsuitable, or unsafe to support Company-owned equipment the Company retains the right to remove the equipment from the structure. If Company equipment is removed under these conditions Customer will owe Company a pro-rated amount for the removed equipment plus removal costs minus salvage value.
11. When changes are requested by Customer at any time after the System is installed and before the normal end of System life, Company will evaluate and estimate the costs of the changes. The changes will be made after the Customer pays the agreed upon amount if any to make changes. Changes include such matters as relocating poles, changing luminaire styles (post top, cobrahead, floodlight), their locations, wattage, and lamp source (e.g., metal halide, high pressure sodium). Any such agreed upon changes will be documented either by a new or an amended Agreement. New equipment added to the System will require a new Agreement.
12. If any part, term, or provision of this Agreement is adjudged by a court of competent jurisdiction to be contrary to the law governing this Agreement, the validity of the remaining parts, terms, and provisions shall not be affected thereby.
13. This Agreement, and all the terms and provisions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, personal representatives, and/or permitted assigns.
14. Each party to this Agreement represents that it is sophisticated and capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement.
15. No delay of or omission in the exercise of any right, power or remedy accruing to any party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of any future exercise of any right, power or remedy.
16. Neither party shall assign this Agreement without the prior written consent of the other party, which consent, if given shall not relieve the party of making such assignment from full responsibility for the fulfillment of its obligations under this Agreement. PROVIDED, THAT the Company may assign this Agreement to its parent or any subsidiary entity or to an affiliate.

**THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.**

**PURCHASE ORDER  
CITY OF NOBLESVILLE  
16 SOUTH 10TH STREET STE 270**

<b>INDIANA RETAIL TAX EXEMPT</b> CERTIFICATE NO. 0031216070010
<b>FEDERAL EXCISE TAX EXEMPT</b> 356001141

**NOBLESVILLE IN 46060  
 PHONE: 317-776-6328  
 FAX: 317-776-6369**

**PURCHASE ORDER NO. 240252**  
 THIS NUMBER MUST APPEAR ON INVOICES, A/P  
 VOUCHER, DELIVERY MEMO, PACKING SLIPS,  
 SHIPPING LABELS AND ANY CORRESPONDENCE.

**SHIP TO:**

**TO**  
**VENDOR # 1717**  
**DUKE ENERGY INDIANA**  
**1000 EAST MAIN STREET**  
**PLAINFIELD IN 46168**

**ATTN:**

<b>DATE</b> 07/16/2024	<b>DEPARTMENT</b> ENGINNERING		<b>SHIP TO ARRIVE BY</b>			
<b>APPROPRIATION NUMBER</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>DESCRIPTION</b>	<b>PROJECT #</b>	<b>UNIT PRICE</b>	<b>AMOUNT</b>
251026366.200	1.0		TEMP LIGHTING-SR 38 & WHITCOMB/OAKMONT	026.2011	6864.13	6864.13

<b>SHIP VIA</b>	<b>TOTAL</b> 6864.13
-----------------	-------------------------

**SHIPPING INSTRUCTIONS**

- \* SHIP PREPAID
- \* C.O.D. SHIPMENTS CANNOT BE ACCEPTED
- \* PURCHASE ORDER NUMBER MUST APPEAR ON ALL SHIPPING LABELS.
- \* THIS ORDER ISSUED IN COMPLIANCE WITH CHAPTER 99, ACTS 1945 AND ACTS AMENDATORY THEREOF AND SUPPLEMENTAL THERETO.

**PAYMENT**

- \* A/P VOUCHER CANNOT BE APPROVED FOR PAYMENT UNLESS THE P.O. NUMBER IS MADE A PART OF THE VOUCHER AND EVERY INVOICE AND VOUCHER HAS THE PROPER SWORN AFFIDAVIT ATTACHED.
- \* I HEREBY CERTIFY THAT THERE IS AN UNOBLIGATED BALANCE IN THIS APPROPRIATION SUFFICIENT TO PAY FOR THE ABOVE ORDER.

ORDERED BY   
 TITLE \_\_\_\_\_ CONTROLLER