

ORDINANCE NO. 17

CITY OF BLOOMINGTON, INDIANA

AN ORDINANCE RATIFYING AND APPROVING THE ACTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF BLOOMINGTON, INDIANA, IN ENTERING INTO A CONTRACT FOR ORNAMENTAL STREET LIGHTING SERVICE WITH PUBLIC SERVICE COMPANY OF INDIANA, INC., AN INDIANA CORPORATION, ON THE 15 DAY OF June, 19 62.

WHEREAS, HERETOFORE, to-wit: On the \_\_\_\_\_ day of \_\_\_\_\_, 19 62, the BOARD OF PUBLIC WORKS AND SAFETY of the CITY OF BLOOMINGTON, INDIANA, acting for and in behalf of said CITY OF BLOOMINGTON, entered into the following contract for ornamental street lighting service with the PUBLIC SERVICE COMPANY OF INDIANA, INC., which said contract is in words and figures as follows, to-wit:

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**AGREEMENT AND CONTRACT**  
**FOR**  
**ORNAMENTAL STREET LIGHTING SERVICE**  
*between*  
**PUBLIC SERVICE COMPANY OF INDIANA, INC.**  
*and*  
CITY OF BLOOMINGTON, INDIANA

Date entered into . . . . . \_\_\_\_\_

Date approved by PUBLIC SERVICE  
COMMISSION OF INDIANA . . . . . \_\_\_\_\_

Date service commenced . . . . . \_\_\_\_\_

Date of expiration of fixed term . . . . . \_\_\_\_\_

(After last date, agreement continues for successive terms of five years and is binding until 60 days' notice by either party prior to expiration of initial fixed term or any successive term of five years.)

AGREEMENT FOR ORNAMENTAL STREET LIGHTING SERVICE

THIS AGREEMENT made and entered into this.....day of....., 1962, by and between the CITY of BLOOMINGTON, a municipal corporation in Monroe County and organized under the laws of the State of Indiana, acting by and through its BOARD OF PUBLIC WORKS AND SAFETY..... (hereinafter called "Municipality"), party of the first part, and PUBLIC SERVICE COMPANY OF INDIANA, INC., a corporation organized under the laws of the State of Indiana (hereinafter called "Company"), party of the second part,

WITNESSETH:

That for and in consideration of the covenants and agreements of the respective parties hereto, hereinafter set forth, the parties hereto do hereby mutually covenant and agree as follows:

SECTION I. Company will furnish, in accordance with conditions hereinafter set out, all necessary equipment to provide, operate and maintain an ornamental street lighting system, and Company will furnish electric energy, all for the purpose of furnishing ornamental street lighting service to Municipality.

SECTION II. A detail of the locations of the lamps to be supplied for said ornamental street lighting system and the respective sizes of such lamps is set forth on the print hereto attached, bearing print No. A-22496, marked Exhibit "A" and made a part hereof the same as if incorporated herein.

The original installation, as shown on said Exhibit "A", provides for the minimum number of lamps of the respective sizes that shall be operated hereunder during the term of this agreement, said number and sizes being as follows:

SCHEDULE OF LAMPS

- 2 - Single 400 Watt Mercury Vapor
1 - Two Lamp 400 Watt Mercury Vapor

SECTION III. Except as otherwise provided in this agreement, Municipality shall pay Company for the operation of said ornamental street lighting system, and for the electric energy supplied therefor, an amount determined on the basis of the following rates per lamp per annum:

SCHEDULE OF RATES

Table with 2 columns: Single 400 Watt Mercury Vapor (\$114.00) and Two Lamp 400 Watt Mercury Vapor (\$174.00)

Payments for said service and energy supplied shall be made by Municipality monthly in accordance with the provisions of SECTION V, paragraph (8), as hereinafter set out.

SECTION IV. Outage credit hereinafter provided for in SECTION V, paragraph (10), shall be in the following amounts:

SCHEDULE OF OUTAGE CREDITS

Table with 2 columns: Size of Lamp and Outage Credit. Rows include Single 400 Watt Mercury Vapor (31¢ per Lamp per Night) and Two Lamp 400 Watt Mercury Vapor (24¢ per Lamp per Night)

**SECTION V.** The operation of the said ornamental street lighting system, and the supplying of electric energy therefor, shall be in accordance with the following provisions:

(1) *Ownership of System—Service Lines.* Company will, in accordance with the terms of this agreement, furnish, provide, install, own, operate and maintain the necessary transmission and distribution lines, wires, conduits, conductors, cables, masts, towers, poles, posts, transformers, lamps, fixtures and other appliances and structures for furnishing ornamental street lighting service to Municipality. The ownership of the property comprising said ornamental street lighting system is and shall remain in Company, and the termination of this agreement for any reason whatsoever shall not in any way affect such ownership by Company, nor deprive Company of the right either to remove any or all property comprising such system or any part thereof or to use the same in, or in connection with, the rendering of other public utility service by Company.

Company shall erect the service lines necessary to supply electric energy to the said ornamental street lighting system within the limits of the public streets and highways of Municipality or on private property as mutually agreed upon by the parties. Municipality shall assist Company, if necessary, in obtaining adequate written easements covering permission to install and maintain any service lines which it may be desirable to install upon private property.

Company shall not be required to pay for obtaining permission to trim or re-trim trees where such trees interfere with any service lines or wires of Company used for supplying electric energy to the ornamental street lighting system. Municipality shall assist Company, if necessary, in obtaining permission to trim trees when Company is unable to obtain such permission through its own best efforts.

(2) *Lighting Hours.* The lighting hours for the said ornamental street lighting system shall be on an "all-night" schedule which provides that lamps are to be lighted from approximately one-half ( $\frac{1}{2}$ ) hour after sunset until approximately one-half ( $\frac{1}{2}$ ) hour before sunrise each day in the year.

(3) *Maintenance of Lighting System.* Company will repair and/or replace and maintain all equipment owned by Company, including lamps and glassware, which may be necessary to provide continuous operation of the ornamental street lighting system.

(4) *Continuity of Service.* Company does not guarantee uninterrupted service from the ornamental street lighting system to be operated in accordance with this agreement, and shall not be liable for any interruption of service when such interruption is without wilful default or neglect on the part of Company, or is due to any cause beyond the control of Company including, but not limited to, strikes, lockouts, riots, insurrections, war, acts of the public enemy, fire from any cause, explosions, accidents, restraint of government, state or municipal interference, breakdowns, injuries to machinery, transmission or distribution systems, necessary repairs and renewals, or acts of God; but Company shall make all reasonable efforts to renew promptly the operation of the ornamental street lighting system in the event of any interruption to the service.

(5) *Liability.* Company shall protect and save Municipality harmless from any and all loss, damage or liability proximately caused by the negligence of Company in the installation and/or maintenance of the ornamental street lighting system, but this shall not be construed as any assumption of any liability for injury to or death of any person or for damage to any property caused by the failure of any lamp or lamps to operate.

(6) *Changes in Lamp Location.* Company will change the location of any lamp or lamps constituting a part of the ornamental street lighting system, which are, or may be, installed and/or operated under the terms of this agreement. Any such change in lamp location will be made only upon written order from Municipality. The actual cost and expense of making each such change in lamp location shall be borne by Municipality.

(7) *Additional System or Lamps.* The installation of an additional ornamental street lighting system or the installation of an additional ornamental lamp or lamps to the system herein contracted for, and the connecting to and/or furnishing of electric energy to such additional ornamental street lighting system, lamp or lamps, shall be subject to a separate or supplemental agreement for any such additional ornamental street lighting system, lamp or lamps.

(8) *Payments for Service.* Municipality shall accept service hereunder and pay for the same on the basis of each and every lamp installed and operated in accordance with the original number of lamps as set out in the "SCHEDULE OF LAMPS" of this agreement: provided, however, that, whenever Municipality shall order Company to increase the size of any lamp supplied hereunder, payments thereafter shall, because of such change,

be increased in accordance with the schedule of charges herein set out in "SCHEDULE OF RATES", for the size lamp ordered. Bills for ornamental street lighting service hereunder shall be presented monthly by Company.

Subject to deductions for outage credits as herein provided and to increases as hereinabove in this section provided in case lamps of greater size are ordered installed by Municipality, the bills for ornamental street lighting service to be submitted by Company to Municipality for any month shall be in an amount equal to one-twelfth (1/12) of the annual charges herein provided for the original number of lamps to be supplied as set forth in "SCHEDULE OF LAMPS" hereof. After such bills have been presented for ornamental street lighting service rendered during the preceding month, Municipality shall make full payment within the ten (10) days immediately following the date for the next regular meeting of the proper municipal authorities having authority to approve such bills.

(9) *Delinquency.* If Municipality shall fail to pay any sum or sums of money as the same become due and payable for ornamental street lighting service rendered under the terms of this agreement and such delinquency continues for a period of thirty (30) days or longer, Company shall have the right to discontinue service to the ornamental street lighting system until such sum or sums of money shall have been fully paid, or Company shall have the right to cancel this agreement in its entirety and may, at its option, remove any parts or all of the ornamental street lighting equipment and system. Such discontinuance, cancellation or removal shall not release Municipality from liability for the payment of any sum or sums of money owing to Company for ornamental street lighting service theretofore furnished to Municipality nor relieve Municipality of liability to respond in damages for such violation of the terms of this agreement.

(10) *Deduction for Outage Credit.* Municipality, through its Police Department or other authorized agent, shall make a report of any lamp or lamps which are out of service during proper lighting hours. A copy of such report shall be delivered to Company's local or district office, or to such representative as Company may designate to receive such reports.

Company shall restore any lamp or lamps to service before the proper hour for lighting on the same day as reported if the report of lamp outage is received before the hour of 12 o'clock noon, or Company shall restore any lamp or lamps to service before the proper hour for lighting on the next succeeding day if the report of lamp outage is received after the hour of 12 o'clock noon. In the event of the failure to restore any lamp or lamps to service as hereinbefore provided, after receipt of the report hereinbefore provided for, Municipality shall, for each such lamp outage, receive a deduction for outage credit from the payment for ornamental street lighting service for the current month in accordance with the provisions of the "SCHEDULE OF OUTAGE CREDIT."

Such deductions for outage credit shall constitute the only liability that Company assumes or shall have because of the failure of any lamp or lamps to operate during lighting hours, and Company shall not be liable either to Municipality or to any third party or parties for any claims for damages directly or indirectly attributable to such lamp outage.

(11) *Rate Changes.* Should any change in the rates provided for herein be lawfully ordered by the Public Service Commission of Indiana, payments for service by Municipality to Company as provided for herein shall thereafter be made upon the basis of such new rates as changed and approved by the Public Service Commission of Indiana.

SECTION VI. This agreement shall become effective and binding upon the parties hereto when and as soon as it is approved by the Public Service Commission of Indiana. Service under this agreement shall commence as soon as practicable, but in no event later than 90 days after the date this agreement is approved by said Commission, and Company shall notify Municipality in writing as to the date on which service hereunder will be commenced. Unless and until otherwise ordered by said Commission, the initial fixed term of this agreement during which Municipality shall take and Company shall render service hereunder shall be ten (10) years from the said date when service commences hereunder, and after the said initial fixed term of ten (10) years this agreement shall continue in force and effect for successive terms of five years. Either one of the parties hereto upon at least sixty (60) days prior written notice to the other may terminate this agreement at the expiration of said initial fixed term of ten (10) years or at the expiration of any successive five-year term.

SECTION VII. From and after the date when service is commenced under this agreement, this agreement shall supersede any and all existing agreements between the parties hereto under the terms of which ornamental street lighting service is supplied by Company to Municipality for the system or part of a system hereinabove described, and all such other agreements as to ornamental street lighting service, or insofar as they cover such ornamental street lighting service, shall be deemed terminated and cancelled as of such date: provided, however, that such termination or cancellation shall not preclude or destroy the right of either party hereto thereafter to commence an action, and recover, for any unpaid bills or other damages resulting from any breach of such other agreement during the time the same was in force and effect.

**SECTION VIII.** All terms and stipulations heretofore made or agreed to in respect to ornamental street lighting service by Company to Municipality subsequent to the commencement of service hereunder are merged into this written agreement, and no previous or contemporaneous representations or agreements made by any officer, agent or employee of Company or Municipality shall be binding upon either party in connection with the rendering or receiving of ornamental street lighting service hereunder unless contained herein.

**SECTION IX.** Municipality represents and covenants that all things required by law precedent to the lawful execution by Municipality of this agreement have been prepared, given, held, submitted, furnished and properly done and performed.

**SECTION X.** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

IN WITNESS WHEREOF the parties hereto have caused quadruplicate copies of this agreement to be duly executed by their respective duly authorized proper officers, and their respective corporate seals to be affixed to such quadruplicate copies, and properly attested, all as of the day, month and year first above written.

CITY of BLOOMINGTON, Indiana,

By BOARD OF PUBLIC WORKS AND SAFETY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

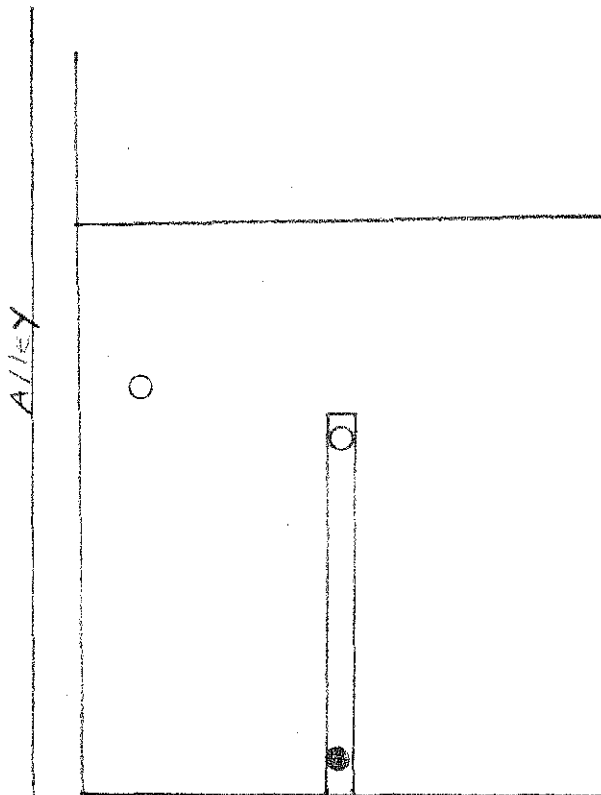
PUBLIC SERVICE COMPANY OF INDIANA, INC.,  
(an Indiana corporation),

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Secretary

SIGNATURES UNNECESSARY ON THIS PAGE



Fourth St.

- Single 400 watt Mercury Vapor
- Two Lamp 400 watt Mercury Vapor

EXHIBIT "A"

**PUBLIC SERVICE CO. OF INDIANA, INC.**

INDEX

**STREET LIGHTS**

REV.

CK.

DETAIL

DR.

J. H.

ORNAMENTAL - FOURTH ST. -  
BLOOMINGTON

APP.

DATE

6-6-62

SCALE

**A-22496**

; and

WHEREAS, all acts, conditions and things precedent to the execution of the contract hereinbefore set forth have happened and been properly done in regular and due form as required by law; and

WHEREAS, said contract has been submitted by said BOARD OF PUBLIC WORKS AND SAFETY of the CITY OF BLOOMINGTON, INDIANA, to the COMMON COUNCIL of said City for its consideration and action thereon;

NOW, THEREFORE, Be It Ordained by the COMMON COUNCIL of the CITY OF BLOOMINGTON, in Monroe County, Indiana, as follows, to-wit:

Section 1. The foregoing contract made and entered into on the 18 day of June, 19 62, between the BOARD OF PUBLIC WORKS AND SAFETY of the CITY OF BLOOMINGTON, INDIANA, and the PUBLIC SERVICE COMPANY OF INDIANA, INC., be and the same is hereby in all things ratified, confirmed and approved.

Section 2. This ordinance is passed on the same day and at the same meeting at which it is introduced and it is passed by the unanimous consent of all members of the COMMON COUNCIL present and there are present and voting at least two-thirds of the members



elect of said COMMON COUNCIL.

Section 3. This ordinance shall be in full force and effect from and after its passage.

Passed by the COMMON COUNCIL this 3 day of July, 1962.

PRESIDING OFFICER OF THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA

Mary Alice Shivers

ATTEST:

T.D. Ellis

Presented by me to the Mayor this 9 day of July, 1962.

T.D. Ellis  
Clerk-Treasurer

Approved and signed this 9 day of July, 1962.

Mary Alice Shivers  
Mayor of the City of Bloomington,  
Indiana