

**BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form**

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

| | | | |
|---|---|----------------------|----------------|
| Date Submitted: | September 6, 2023 | Meeting Date: | Sept. 18, 2023 |
| Contact Information: | | | |
| Requested by: | Joanna Tennell, Senior Planner | | |
| On Behalf of Organization or Individual: Department of Planning & Engineering | | | |
| Telephone: | 317-736-3631 | | |
| Email address: | jtennell@franklin.in.gov | | |
| Mailing Address: | 70 E. Monroe Street, Franklin, IN 46131 | | |
| Describe Request: | | | |
| Approval and Execution of Outdoor Lighting Service Agreement for Westwind at Cumberland, Sec. 1 | | | |
| List Supporting Documentation Provided: | | | |
| 1. Outdoor Lighting Service Agreement – Westwind at Cumberland, Sec. 1 | | | |
| Who will present the request? | | | |
| Name: | Joanna Tennell | Telephone: | 317-736-3631 |

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.



IN01 LIGHTING SERVICE AGREEMENT

Customer Information:

CITY OF FRANKLIN

MAYOR@FRANKLIN.IN.GOV

70 E Monroe St
Franklin, IN 46131

Project Information:

Indiana

Account Number:

Work Order Number:

48448607

Duke Energy Representative Contact Info:
Nate Fecke

This Lighting Service Agreement is hereby entered into this 14TH day of August, 2023, between Duke Energy (hereinafter called the "Company") and CITY OF FRANKLIN (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 LED 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 or billing is transferred and shall continue hereafter until terminated *by either party upon written notice 22 days prior to termination*. 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 _____

Duke Energy Representative _____

Date Signed _____

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

| Summary of Estimated Charges | | | | |
|------------------------------|----------------------|------------------------|-----------------------------|----------------------------------|
| Minimum Service Term | Initial Monthly Cost | Total One Time Charges | Total Cost for Initial term | Ongoing Monthly Charge post Term |
| 0 Years () Months | 49.14 | 15911.43 | 15911.43 | 49.14 |

| Monthly Base Charges | | | | | | | |
|----------------------|----------|--|--------------------|-------------|--------|------------|-------------|
| Service Required | Quantity | Product Description Fixtures and Poles | Equipment Rental** | Maintenance | Energy | Unit Total | Sub-Total |
| I | 007 | LFIX-TRAD-LED-50-BLK-III-3000K-M | 2273.06 | 5.80 | 1.22 | 2280.08 | 15960.56 |
| | | Rental, Maintenance, F&E Totals: | \$15,911.42 | \$40.60 | \$8.54 | | |
| | | Estimated Change to Base Monthly Charge Total | | | | | \$15,960.56 |

Special Instructions :

Lumpsum amount of \$15,911.43 to be paid by: WESTWIND AT CUMBERLAND DEVELOPER. LLC

Date: _____

Lumpsum Payer Signature: _____

* Customer is a government entity and exempt from paying sales tax

PROPOSALS ARE VALID FOR 90 DAYS FROM THE DATE POSTED ON THE LIGHTING SERVICE AGREEMENT PAGE AND THE AGREEMENT 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. Please see attached drawing or Exhibit 'A' for the proposed placement of 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.
- 1.2 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 RATE

****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 equals 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.

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 - See Section I

- 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 Section I 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 3 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.

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- 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

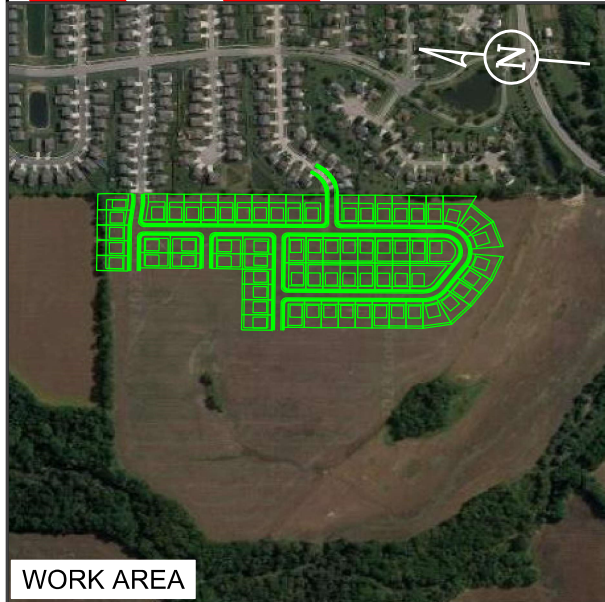
- 1 All System facilities installed by Company under this Agreement are and shall remain the property of Company. The termination of this Agreement for any reason whatsoever shall not in any way affect such ownership by Company, deprive Company of the right either to remove any or all property comprising 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, 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 Service under this rate schedule shall be for a minimum initial term of ten (10) years from the commencement of service and shall continue until terminated by either party by sixty (60) days written notice. Upon early termination of service under this schedule, the customer shall pay an amount equal to the remaining monthly lease amount for the term of contract, applicable Customer Charges and removal cost of the facilities.
 - 5 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.
 - 6 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.
 - 7 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.
 - 8 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
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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.

- 9 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.
- 10 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.
- 11 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.
- 12 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, light emitting diode). 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.
- 13 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.
- 14 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.
- 15 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.
- 16 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.
- 17 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.



REMEMBER: Work zone area conditions may have changed for this job! Everyone is responsible for verifying the above safety information is correct prior to any work being performed each day.



WORK AREA



PLEASE SEE ELECTRIC SUBDIVISION WORK ORDER
FOR EQUIPMENT FIELD ID INFORMATION

INSTALL 50W LED TRAD ST LT ON 15' STYA DB AL
POLE. SET POLE 3' BACK OF CURB ON PROPERTY
LINE, UNLESS NOTED (W.C. *ICAL) TOTAL=7

Work Order Number: 48389939
Customer/Contact: ED FLEMING
Contact Phone: 317-918-7685
Job Site Address: 1399 CRABAPPLE RD
City: FRANKLIN
County: JOHNSON
State, Zip: IN, 46131
Designer: SAVANNAH HECKMAN, KCI
Designer Phone: 502-795-1051

Circuit ID: FRANKLIN 230 KV (178)1238
Primary Voltage: 12.47/7.2 kV
Permit Required: Yes___ No ☒
Permit Type/No.:
Permit Type/No. 2:
Permit Type/No. 3:
Permit Type/No. 4: