

SPECIAL MEETING.

COUNCIL CHAMBER,
CITY OF INDIANAPOLIS,
May 18, 1898. }

The Common Council of the City of Indianapolis met in the Council Chamber, Wednesday evening, May 18, 1898, at 8 o'clock, in special session, pursuant to the following call:

INDIANAPOLIS, IND., May 17, 1898.

Charles H. Stuckmeyer, Esq., City Clerk:

Dear Sir—Please issue the following call:

To the Members of the Common Council:

Gentlemen—You are hereby requested to meet in special meeting in the Council Chamber, at 8 o'clock p. m., Wednesday, May 18, 1898, to transact such business as may come before said meeting.

JNO. H. MAHONEY,
President.

I, Charles H. Stuckmeyer, Clerk of the Common Council, do hereby certify that I have served above notice upon the President and each member of the Common Council prior to the time of meeting, pursuant to the rules.

CHARLES H. STUCKMEYER,
City Clerk.

Present, Hon. John H. Mahoney, President of the Common Council, in the chair, and 19 members, viz.: Messrs. Allen, Bernauer, Bowser, Clark, Colter, Costello, Harston, Higgins, Knight, Little, Madden, Merrick, Moffett, McGrew, Rauch, Scanlon, Shaffer, Smith and Von Spreckelsen.

Absent, 1—viz.: Mr. Crall.

The Clerk proceeded to read the Journal, whereupon Councilman Madden moved that the further reading of the Journal be dispensed with.

Which motion prevailed.

REPORTS FROM OFFICIAL BOARDS.

Communication from Board of Public Works:

DEPARTMENT OF PUBLIC WORKS. }
 OFFICE OF THE BOARD, }
 INDIANAPOLIS, IND., May 18, 1898. }

To the President and Members of the Common Council:

Gentlemen—We send you herewith, for your consideration and action in the premises, a certain contract and franchise agreement made and entered into this day with the New Telephone Company. This contract embodies the amendments which were proposed to the old contract before your honorable body, which is respectfully withdrawn from the further consideration of the Council. Reference is made to changes in Sections 12, 17 and 19.

Very respectfully,

M. A. DOWNING,
 W. SCOTT MOORE,
 T. J. MONTGOMERY.
Board of Public Works.

Which was read and referred to Committee on Contracts and Franchises.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business, the following ordinances were introduced:

By Board of Public Works:

G. O. No. 41, 1898. An ordinance ratifying, confirming and approving the certain contract or agreement made and entered into on the 18th day of May, 1898, between the City of Indianapolis, by and through its Board of Public Works, and the New Telephone Company, whereby said company is authorized to construct in and over the streets, alleys, avenues and public places of the City of Indianapolis a telephone plant and system and to operate the same for a fixed period, subject to limitations and conditions therein contained, and providing for the taking effect of the same.

WHEREAS, Heretofore, to-wit, on the 18th day of May, 1898, the City of Indianapolis, by and through its Board of Public Works, entered into the following contract and agreement with the New Telephone Company, namely:

THIS AGREEMENT, made and entered into this the 18th day of May, 1898, by and between the City of Indianapolis, Marion County, in the State of Indiana, hereinafter called the City, by and through its Board of Public Works, party of the first part, and the New Telephone Company, a corporation organized and incorporated under and by virtue of the laws of the State of Indiana, hereinafter called the Company, party of the second part:

Witnesseth, That the City, by and through its Board of Public Works, under and by virtue of the power conferred upon it by an act of the General Assembly of the State of Indiana, entitled "An act concerning the incorporation and government of cities having more than one hundred thousand population according to the United States census last preceding, and matters connected therewith, and declaring an emergency," approved March 6, 1891, does hereby authorize and empower the said Company, party of the second part, its successors and assigns, and by the terms of this contract consent, permission and authority are granted unto and vested in the said Company, party of the second part, subject to any laws and ordinances now in force, or hereafter enacted or put in force as police regulations, the right to construct, lay and operate in said city, conduits, ducts, man-holes and appurtenances thereto, underground, and to string and erect wires, cables, poles and proper fixtures and appurtenances suitable for telephone uses, overhead, in, through and along the streets, avenues, alleys and public places of said city, and to operate a telephone exchange therein and furnish telephone service to its patrons and subscribers, upon the following conditions, terms and limitations, to-wit:

1. All rights, privileges and concessions herein granted to the said Company are expressly limited to a period of twenty-five years from the date hereof, which limitation of time is hereby declared to be one of the chief considerations for the grants herein contained. And the said Company, party of the second part, recognizing and conceding that such limitation of time as herein expressed is one of the essential and governing conditions of this contract, does hereby bind itself, its successors and assigns, that at the expiration of said period of time it will yield possession of the streets, alleys, avenues and public grounds of said city, and cease the operation of said telephone plant and system, and from thenceforward will make no claim of any kind to exercise any right under the grant herein made, whether such claim be founded upon any charter or corporate rights claimed or otherwise, and any rights which might be claimed by said company to hold beyond said period of time, under the statute under which it was incorporated are herein and hereby expressly waived.

To the end that at the expiration of the said period for which said grant is made there may no doubt exist as to the respective rights of the parties hereto, it is agreed:

A. If at any time not less than three months nor more than six months before the expiration of said term, a new franchise and right to occupy the streets, alleys, avenues and public places of said city, and to operate a telephone plant and system therein, shall not have been granted to said company, its successors or assigns, by the proper officers of said city, then the said city shall have the option to become the purchaser and owner of all the tangible property

constituting the telephone plant and system of said company by the payment to the corporation then owning the same the fair market value of such tangible property, and in case the said city, through its proper officers, and the said corporation are unable to agree as to the fair market value of such property, the same shall be determined by three freeholders and voters of the State of Indiana, one of whom shall be chosen by the Mayor of said City, one by the said corporation owner, and the third by the person who shall then be the Judge of the Circuit Court of Marion County, Indiana, and the finding of the majority of such committee as to such value shall be binding on both said City and such corporation, and the said City shall be bound to pay, and the said corporation shall be bound to receive the said amount as the purchase price of said property: *Provided*, That nothing herein contained shall be so construed as that the said City shall be compelled to purchase said tangible property or any part thereof unless by its officers it shall elect to have the market value thereof appraised, as hereinbefore provided.

B. If within three months of the expiration of said period of twenty-five years this contract and the franchise hereby granted shall not have been renewed or extended by a new contract ratified by ordinance, and if said City shall not have exercised its optional right to purchase the tangible property constituting said telephone plant, the said City shall have the right, through its proper officers, to enter into a contract with and grant a franchise to another company or corporation to operate said telephone plant and system, upon such terms as may be fixed by such contract, for a period commencing on the date of the expiration of the franchise herein granted, and such company or corporation to which such new franchise may be granted may become the owner of the said tangible property and have the right to operate the same upon the payment by it to the company, party of the second part, or to whomsoever may then be the owner of such property, the fair market value thereof, and if the said company or corporation to which such new franchise is granted, and the corporation owner of such property shall be unable to agree as to the fair market value of said property, then the same shall be determined by three (3) freeholders and voters of the State of Indiana to be chosen, one by each of such corporations and the third by the person then holding the office of Judge of the Circuit Court of Marion County, Indiana, the decision of said committee, or a majority thereof, to be final and binding on all such parties.

C. If at the expiration of said term of twenty-five years, the City of Indianapolis shall not have become the owner of the said plant and system, and if the tangible property constituting said plant and system shall not have been sold and delivered to any other company or corporation having a franchise and the right by contract with the city to operate the same, and if this contract or franchise shall

not have been renewed or extended as hereinabove provided, then the said city shall, through its proper officers, proceed to offer by public advertisement a new franchise for the operation of said plant and system for a term of years not exceeding twenty-five, and such franchise shall be awarded to the bidder, who or which being solvent and responsible, offers the most favorable terms for the city and its citizens, and who or which will bind himself or itself to take the tangible property constituting said plant and system, and pay to the corporation then owning the same, the fair cash value thereof at that time, to be determined by three freeholders and voters of said State, one to be selected by the corporation owner, one by such successful bidder, and the third by the person who shall then hold the office of Judge of the Circuit Court aforesaid, the decision of a majority of which committee shall be final and binding on all parties concerned. In case there is no satisfactory bid for such franchise, then said city through its officers shall have the right, without any process of law, to take possession of all streets, alleys and avenues or other grounds occupied by the said plant and system, and the said corporation owner shall have three months time from said date of expiration to remove its tangible property situate above ground, from said streets, alleys and other grounds, and in case of its failure to so remove said property within such time the same shall become the absolute property of said city.

D. It is hereby expressly agreed that that part of said telephone plant and system which shall be laid and constructed under ground, other than the wires and cables, shall under no circumstances be removed, but that the same shall, after the expiration of said period, be the property of said city, it being the purpose of this stipulation to prevent the digging into the pavements, streets, sidewalks and other public grounds, which would be necessary to effect the removal of that part of said plant, other than such wires and cables, which by the terms hereof are required to be placed under ground.

2. The said company, party of the second part, shall, within sixty days after the passage and approval of an ordinance of the Common Council of said city ratifying this contract, proceed to construct and equip within said city a first-class modern telephone plant, sufficient in character and extent to furnish to all inhabitants of said city desiring the same good, first-class and satisfactory telephone service; and such work of construction shall proceed without any unnecessary delay until the said plant and system shall be completed. All materials used in the construction and equipment of said plant shall be of the best quality, and equal in all respects in every part to that used in the construction and equipment of any other telephone plant and system in said city.

The said telephone plant shall be completed and in successful operation within one year from the date of passage of an ordinance

by the Common Council of said city ratifying and approving this contract.

And it is agreed by the parties hereto that the said company, party of the second part, shall forfeit and pay to the City of Indianapolis, as liquidated damages for breach of this contract, the sum of fifty dollars for every day that the completion of said plant is delayed beyond that date, and the Board of Public Works of said city is authorized and empowered to pay into the City Treasury, out of the moneys deposited with it by said company as hereinafter provided, the entire amount of money which shall be so forfeited to said city on account of such delay.

3. The said company, party of the second part, agrees and binds itself to place underground all its wires, cables, conduits, ducts and appurtenances that may be used in the construction of its said plant and system in all that territory bounded on the north by North street, on the south by South street, on the east by East street and on the west by West street, and also its wires, cables, conduits, ducts and appurtenances used on and along either and all of the streets named, along and forming said boundary lines, except such aerial poles, cables and wires as the said Board of Public Works shall give its express permission to be allowed in such territory for local distribution; and all poles shall be in alleys, unless otherwise ordered by said board.

All such overhead poles, cables and wires within said territory or within said city shall be constructed and placed in a manner satisfactory to said board.

Before commencing the work of constructing the said plant and system, the said company, party of the second part, shall submit to said Board of Public Works maps, plans and specifications, showing where and how such work is to be done, which maps, plans and specifications shall be approved by said board before such work shall be begun, a duplicate of which maps, plans and specifications shall be filed and deposited with said board.

4. It is agreed by the parties hereto that by fixing herein the present area within which the conduits, ducts and wires of said plant shall be placed underground the right of the Common Council to hereafter exercise any of the police powers of said city shall not be in any wise restricted or abridged.

5. The said company, party of the second part, shall provide one duct in each and all conduits laid underground as aforesaid, for the sole use of the City of Indianapolis, and shall give to said city the right to the exclusive use of the top cross arm on every pole erected in any part of said city.

6. It is agreed that the kind and height of all poles, the kind, size and manner of attaching cross arms thereto, and the manner of attaching cables and wires to every pole and system of poles to be erected in the construction or repair of said plant at any time, shall be subject to the approval of the Board of Public Works,

and the right is hereby reserved to said Board to modify the approval above provided for at any time and to order modifications, general and particular, of any of the above mentioned details, and also at any time, upon reasonable notice, to order and require the removal of any pole, and upon the failure of the said company to comply with any such order and requirement the said board shall have the right to cause any such pole to be removed and collect the cost of such removal from said company.

All poles used in the construction of said plant, outside the territory bounded by North, South, East and West streets, shall so far as possible be located in alleys, and all poles, wherever erected in the construction of said plant, shall be so placed as to interfere as little as possible with other public uses of the streets, alleys or other grounds, or with public or private interests or conveniences.

7. It is also agreed that all the underground conduits and ducts used in the construction of said plant shall be not less than three feet underground, and shall be so located and constructed as not to interfere with or disturb existing surface or underground structures, conduits, pipes or other property belonging to other corporations, companies or persons, or sewers or sewer connections; nothing contained herein shall preclude the said city from prosecuting or authorizing any future public work of any character, but in the prosecution of any public work or improvement hereafter the said board shall have the right, if it deems the same necessary, to require the temporary removal of any conduit, duct or appliance, authorized by this contract to be laid, and the same shall be removed or necessary changes made therein by the said company, on the order and requirement of the said board, and in case of a failure on the part of the said company to comply with any such order or requirement, relative to such removal or change for the purposes aforesaid, then the said board may make such removal or change and the necessary cost thereof shall be paid by said company to the City Comptroller upon proper demand being made therefor.

8. It is also agreed that all the work of the construction or repair of said telephone plant shall be under and subject to, the supervision of inspectors to be appointed by the said Board of Public Works, and all the necessary expense for the employment of all such inspectors shall be paid by the said company to the City Comptroller on demand. The Board of Public Works of said city shall at all times have the right to inspect, superintend and control the construction of the conduits, man-holes and other appurtenances which may be constructed as part of said plant; and the right is hereby reserved to said board to order any change made from time to time for city purposes; all such changes to be made by the said company without expense to the said city. In case the said company shall neglect or refuse to obey any instruction of said board with respect to any alteration to be made, the said board is authorized

to make the same, and collect the cost thereof from the said company.

9. The said company, party of the second part, agrees and binds itself that in the construction or repair of said plant it will not at any time open or encumber more of any street, alley or public place than may be necessary to enable it to perform the work of laying its wires, cables, conduits, conductors and other appurtenances, with proper economy and efficiency, and that no opening of, or encumbrance to any of such streets, alleys or public places shall be permitted to remain, or continue for a longer period than may be necessary within the judgment of the Board of Public Works; and that it will properly and effectually guard all such openings and encumbrances with such barriers and lights as will prevent the happening of accidents or injuries by reason thereof. The said company, party of the second part, also agrees and binds itself to hold the City of Indianapolis harmless as against any and all damages done by it to the streets, alleys, avenues and public places within such city, in the building and construction of its said plant underground or aerial; that it will restore all streets, alleys, avenues and public places to the same condition after the completion of its work as they were before being cut into or used by it the said company—all such streets, alleys, avenues and public places to be repaved with the same material with which they were paved before being disturbed by it, or with such material and in such manner as shall be satisfactory to said Board of Public Works; that it will at all times make any and all repairs which may be necessary to any of the streets, alleys, avenues or public places, by reason of the same having been digged into, or disturbed, in the construction or repair of said plant; that it will not in such construction or repair, dig, cut into or remove material from the surface or underneath the surface of any such street, alley, avenue or public place, without first obtaining the consent of the said board; that it will pay all damages, for personal or other injuries, that may result from, or grow out of any work that may be done by or for it in such construction or repair; that it will indemnify and save said city harmless from any and all liability or expense growing out of, or resulting from the construction or repair of any part of its said plant; that it will, upon the demand of the City Comptroller of said city, pay any damages which may have accrued to said city, and any and all judgments which may have been obtained and rendered against such city on account, and by reason of, the construction or repair of said plant or the occupancy by it of any of the streets, alleys, or public places in said city; that if the said city shall become involved in any action or suit, on account of any act or omission of the said company in the construction or operation of its said plant, it will upon notice from said city or its proper officers, appear and defend such action or suit without expense to the said city; and that it

will also protect and save said City of Indianapolis harmless as against any and all suits which may be brought by any person or corporation for the infringement of any patent which may be alleged against such corporation, either in the course of the construction or operation of the said telephone plant or system.

10. The said company, party of the second part, also agrees and binds itself to connect the lines of its telephone system in said city with the line or lines operated by any and all other telephone companies doing business outside the City of Indianapolis, in the State of Indiana, desiring such connection, making application therefor and constructing its or their said line or lines, or connecting lines to the corporate limits of said city; which said connection shall be made on reasonable terms and without discrimination: *Provided*, That the owners of such outside lines, desiring and applying for such connection as aforesaid, shall agree as a condition of such connection, to receive and transmit on like terms all messages in which the said company, party of the second part, may be interested.

It is understood between the parties hereto that this agreement to connect with such outside telephone lines in the State of Indiana is one of the essential conditions upon which this franchise is granted. In case there shall be any such disagreement between said company, party of the second part, and the owner or owners of any such outside telephone line or lines as to the terms and conditions upon which any such connection shall be made, as to hinder or delay the same, then such differences and disagreement shall be promptly submitted to an arbitration committee to be composed of three freeholders and voters of the State of Indiana, one of whom shall be named by the said company, party of the second part, one by the owner or owners of said outside line desiring connection, and the third by the mayor of said city, and the decision of a majority of said committee as to the terms and conditions upon which such connection ought to be made shall be final and conclusive upon all such parties.

11. It is distinctly understood by both parties hereto that the principal consideration for the granting of the franchise and privileges conferred herein is and will be the securing of a reduction of telephone rates to the citizens of said city, and the fixing of such rates as hereinafter provided, and the maintenance of such reduced rates during the period of time covered by this contract. It is therefore agreed that in case the said company, party of the second part, should at any time consolidate with or be absorbed by any competing telephone company, or if any such competing telephone company shall, directly or indirectly, become the owner of one-third or more of its capital stock, or should control, directly or indirectly, such part of its capital stock, or in case there should be any combination, collusion or co-operation between said company, party of the second part, and any competing company,

or between the stockholders or officers of such two companies whereby the price of telephone service as fixed herein shall be in anywise increased, or any of the terms and provisions of this contract be modified, changed, evaded or nullified, then all rights hereby or herein granted to said company, party of the second part, shall be forfeited and the franchise hereby granted be null and void, and the Board of Public Works of said city shall be authorized to declare the same forfeited, and proceed to grant a new franchise for the operation of said plant and system; and in the event of any such consolidation, absorption, collusion, combination or co-operation resulting in the increase of the rates fixed herein, or in anywise impairing the force and effect of this contract, the said city shall have the right to declare forfeited to the City of Indianapolis, and take possession of all the tangible property constituting the telephone plant and system of said company, party of the second part, and own and operate or lease the same as the absolute property of such city; it being distinctly agreed that such tangible property so to be forfeited and taken would be the true amount of liquidated damages which would be sustained by said city by reason of any such violation of the terms of this contract, and the measure of such damages has been thus definitely agreed upon and determined by the parties hereto, as aforesaid.

It is, however, agreed by and between the parties hereto that the said company, party of the second part, shall have the right to consolidate with any competing telephone company, with the consent of the Board of Public Works of said city, but only in case the said competing company shall agree, and bind itself to the satisfaction of said board, that it will reduce the telephone rates to be charged by it to its patrons, and to all the inhabitants of said city who may become its patrons, to the prices and rates herein fixed, and also that it will maintain and operate all the lines established by said company, party of the second part, and render and furnish good telephone service at such rates to all the patrons which said company may have at the time of such consolidation, and to all other persons in said city residing on or near the lines of its said system, and that it will adopt and carry out the provisions of this contract as fully and faithfully as though it were a party hereto, and also that it will connect its system with the lines of any and all independent telephone companies doing business outside the City of Indianapolis, with which the system of the said company, party of the second part, shall have been connected at the time of such consolidation, and shall also agree and bind itself to carry out all arrangements and contracts of said company, party of the second part, with all such independent telephone companies.

12. The capital stock of the said company, party of the second part, shall not be increased beyond four hundred thousand dollars

(\$400,000), nor diminished, during the period covered by this contract, without the express consent of the Board of Public Works of said city, which consent shall be expressed in a resolution to be duly adopted by said Board and ratified by the Common Council of said City of Indianapolis.

13. In consideration of the grant of privileges herein contained, the said company, party of the second part, agrees and binds itself, its successors and assigns, to furnish to the inhabitants of the said City of Indianapolis first-class telephone service, of the best and most modern character, at and for the following rates and prices, during the entire period covered by this contract, to-wit:

For business houses situated within two miles from the center of Monument Place in said city, forty dollars (\$40) per annum.

For business houses situated beyond said two-mile limit, one dollar and fifty cents (\$1.50) per annum additional for each additional one-fourth ($\frac{1}{4}$) of a mile or fraction thereof in distance from said Monument Place.

For residence houses situated within a distance of two miles from the center of Monument Place, twenty-four dollars (\$24.00) per annum, and one dollar and fifty cents (\$1.50) per annum additional for each additional one-fourth ($\frac{1}{4}$) of a mile or fraction thereof in distance from said Monument Place. It is understood by both parties hereto that the words "service" and "telephone service," wherever used herein, shall be construed and deemed to mean twenty-four hours continuous telephone service for and during each and every day of the year, and that the rates above fixed shall not apply to party lines.

14. And in further consideration of the grant of privileges herein contained the said company, party of the second part, agrees and binds itself, its successors and assigns, to pay to the City of Indianapolis the sum of six thousand dollars (\$6,000) per annum, one-half of which sum, to-wit: three thousand dollars (\$3,000), shall be paid on the first days of July and January in each year—the first of such payments of \$3,000 to be made on the first day of July, 1899, which is to be an advance payment for the following six months, and there shall be paid the said sum of \$3,000 semi-annually as aforesaid thereafter, until the expiration of the full period covered by this contract. All such sums are payable without relief from valuation or appraisal laws, and to be a first lien on all the property, moneys, demands and choses in action of said company, which lien may be enforced by said city in any court of competent jurisdiction. In case the said company shall fail to pay any such sum of money, within thirty days after the same shall become due as above provided, it is agreed that a penalty of fifty per centum on the whole amount due shall be added to such amount, as liquidated damages for breach of this contract, which additional amount shall also be payable without relief from valuation or appraisal laws.

If, in default of such payment as aforesaid, the said city shall bring suit to recover any such sum and enforce its said lien, it shall be entitled to recover, in addition to the said principal sum, and the fifty per centum penalty thereon as liquidated damages, reasonable attorneys' fees, for the institution and prosecution of such suit, all of which said party of the second part agrees to pay: *Provided*, That when the said company, party of the second part, in the operation of its said plant and system, within said city, shall have in use six thousand (6,000) instruments—furnishing telephone service to six thousand persons, firms and corporations—then the said company shall pay to the said city the sum of two dollars (\$2.00) per annum for every such additional telephone service in excess of six thousand (6,000), such payment to be made semi-annually as aforesaid, and to be in addition to the said payment of six thousand dollars (\$6,000) per year hereinbefore provided for. And it is also agreed that the said company, party of the second part, shall on the first days of July and January of each year, commencing with the first day of July, 1899, make a report to the Comptroller of said city, which report shall be in writing and sworn to by its president, and shall set forth therein the number of its patrons and the number of telephone instruments it has in use at the date of such report.

15. It is also agreed by and between the parties hereto that whenever any number of citizens of said city desiring telephone service shall, by written petition, show to the Board of Public Works that the said company, party of the second part, has failed and refused upon their request to furnish them such service, the said board shall cause written notice to be given to said company to appear before it a time certain, to be named in such notice, not less than three days from the date thereof, and show cause why such telephone service should not be furnished to such petitioners; and at the time so fixed the said board shall proceed to hear the claims of said petitioners, and shall also hear the claims of said company and its representatives in opposition thereto; and if after such hearing the said board shall be of opinion that the prayer of such petitioners should be granted it shall, in writing, order and direct said company to furnish such telephone service at the rates fixed herein to any such persons so petitioning, which order shall be final and shall be acquiesced in and obeyed by the said company and such service furnished to such petitioners within a reasonable time, to be fixed by said board; and, in case of a failure to furnish such service within such time so fixed, the said company shall pay to the said city as liquidated damages for the breach of this contract the sum of ten dollars (\$10) for each day that the furnishing of such service is delayed after the day so fixed, as aforesaid.

16. It is also agreed by and between said parties, that if after work is commenced on the construction of said telephone plant,

as hereinbefore provided, there should be a cessation of said work for a period of thirty days without the consent of said Board of Public Works, or unless on account of an injunction issued out of some court of competent jurisdiction, or on account of a strike or some other cause over which the said company, party of the second part, shall have no control, the said Board shall have the right to declare the franchise, and all rights herein granted, forfeited, and make such contract as it deems advisable with other persons or corporations for the completion and operation of said plant; and it is also agreed that after such plant shall have been completed, or so far completed that a telephone exchange shall be in operation, if there shall be a cessation or interruption of telephone service to the patrons of said company for a period of ten days, except by consent of said board, or in case of an injunction as aforesaid, or strike or other cause over which said company could have no control, the said board shall have the right to declare all the rights of said company under this contract and franchise forfeited to said city, and shall have the right to take possession of and operate, or lease the said plant, or take such other steps as it may deem necessary to secure efficient and continuous telephone service to all persons having contracts with said company or connections with its said system.

17. It is also agreed that the franchise and privileges herein granted by the City of Indianapolis, are so granted upon the distinct condition that neither such franchise, nor any rights granted by this contract shall be assigned, nor in any manner transferred by the said company, party of the second part, either directly or indirectly without the consent of the Board of Public Works of said city and ratified by the Common Council of the City of Indianapolis expressed in a resolution regularly adopted by said board.

18. The said company, party of the second part, shall, as partial security for the performance of this contract, deposit with the said Board of Public Works within five days after the ratification hereof by the Common Council of said city, the sum of twenty-five thousand dollars (\$25,000) in the lawful money of the United States, ten thousand dollars of which amount has already been paid by it to said board, the receipt whereof is hereby acknowledged, leaving the additional sum of fifteen thousand dollars (\$15,000) yet to be deposited within the time fixed as aforesaid. It is agreed that said sum of twenty-five thousand dollars shall be refunded to said company, party of the second part, at the times hereinafter provided, as the work of constructing said telephone plant and system progresses and the successful operation of the same is accomplished, subject to the conditions and limitations herein contained: Ten thousand dollars of said amount so deposited shall be refunded as aforesaid when all the conduits and ducts necessary in the construction of said telephone plant and system as hereinbefore provided shall have been placed under ground in the

territory bounded by North, South, East and West streets as aforesaid, and when the streets, alleys, sidewalks and public grounds through, across and under which such conduits and ducts shall be laid, have been restored to as good condition as they were when such work was commenced, in accordance with the provisions and requirements of said contract:

The further sum of five thousand dollars (\$5,000) shall be so refunded when the poles and aerial structures have been erected and the necessary wires strung thereon, and the said plant completed in that respect to the satisfaction of said board, and in accordance with said contract within a radius of two miles from the soldiers and sailors monument in Monument Place in said city, it being reserved to said board to determine when there has been a substantial compliance with this provision:

The further sum of five thousand dollars (\$5,000) shall be so refunded when the said plant and system have been completed according to the terms of said contract, all parts thereof connected with the central office, or exchange, and good and efficient telephone service shall have been rendered to all the patrons of said company in a manner satisfactory to said board for a period of thirty (30) days; and the remaining five thousand dollars (\$5,000) shall be so refunded when the said plant and system have been in operation in a manner satisfactory to said board, and in accordance with said contract, at the rates herein contracted for, and first-class, modern, efficient telephone service shall have been rendered to the inhabitants of said city, desiring and entitled to receive the same under the provisions of this contract, for the period of three months from the date of the refunding of the last preceding sum of five thousand dollars (\$5,000). No part of said money so deposited shall be refunded to said company, party of the second part, unless the conditions of this contract, as above set forth, are complied with by it as aforesaid.

19. And as further security for the performance of the conditions of this contract, the said company, party of the second part, at the time of the completion of said deposit of \$25,000, and before exercising any of the rights herein granted, shall execute and file with said Board of Public Works, its bond, with good and sufficient sureties, to the satisfaction of said board, in the sum of twenty-five thousand dollars (\$25,000), which bond shall be conditioned for the faithful performance by said company of each and every stipulation and agreement contained in this contract, and for the carrying out of all the terms and conditions thereof during the entire period and term covered thereby, and the said Board of Public Works shall have the right, at any time during said period, whenever the surety on said bond shall not be deemed ample and satisfactory, to require such additional surety thereon as it may deem necessary, and if the said company shall on the reasonable demand of such board, refuse and fail to furnish

such additional surety, then its rights under this contract shall cease, and the franchise hereby granted be forfeited, such forfeiture to be enforced in any court of competent jurisdiction: *Provided*, That the said bond shall be renewed at the expiration of each period of five years during said term of years with security to the satisfaction of said board, each bond that is to be so renewed to be in full force until the said renewal is approved by said Board of Public Works and ratified by the Common Council of the City of Indianapolis; and that no reduction of said bond shall be made without the consent of said Board of Public Works and ratified by the Common Council of the City of Indianapolis.

20. And as additional and further security for the performance of the conditions and stipulations herein contained, the said company, party of the second part, at the time of executing and filing the said bond in the sum of \$25,000, mentioned in the last preceding paragraph, shall also execute and file with said Board of Public Works another bond payable to said city, in the sum of ten thousand dollars (\$10,000) specially conditioned for the indemnification of said city against all loss by reason of damages sustained by any person, firm or corporation by reason, or growing out of the construction or operation of the said telephone plant and system, or any of the work done by said company in such construction on or in any of the streets, alleys or other parts of said city, and also conditioned that the said city shall be saved harmless from the payment of any sum to any person, firm or corporation on account of any act or omission of said company, its agents, officers, or employees, either in the construction of said plant or in the operation thereof, or the payment of any judgment which may be rendered against said city in any action based on any such act or omission; and also that it, the said company, shall comply with all the terms of this contract concerning the indemnification of said city against loss. The said bond shall be renewed at the expiration of each period of five years during said term of years with security to the satisfaction of said board, each bond to be in full force until the bond in renewal thereof is approved by the board; and the said board may require said bond to be renewed at any other time when it deems the security thereon inadequate, or when such bond becomes impaired in amount by reason of judgments, claims or otherwise.

21. In case the party of the second part, its successors or assigns, shall violate any of the terms or obligations herein contained, then and in that event, a right of action for breach of contract shall immediately accrue upon either of the bonds aforesaid as may be appropriate, for any injury or damage arising out of such breach of contract.

22. The City of Indianapolis, party of the first part, reserves to itself all rights and powers, which are now, or may hereafter be vested in its Common Council or other officers concerning the reg-

ulation of the use of its streets, alleys, avenues and public places, to prevent the encumbering of the same, to regulate and protect sewers, to prohibit the digging into such streets, alleys, avenues and public places, and other injury to the same, and it also reserves the fullest right to exercise any and all of its police powers at any time, and nothing herein contained shall be so construed as to any wise abridge any of such powers.

IN WITNESS WHEREOF we have hereunto set our hands and seals this eighteenth day of May, 1898.

CITY OF INDIANAPOLIS,

By M. A. DOWNING,

W. SCOTT MOORE,

T. J. MONTGOMERY,

Board of Public Works.

Party of the First Part.

[SEAL.]

NEW TELEPHONE COMPANY.

By A. H. NORDYKE, President.

Attest, H. B. GATES, Secretary.

Party of the Second Part.

AND WHEREAS, Said contract and agreement has been submitted by the Board of Public Works of the City of Indianapolis to the Common Council of said city for its action thereon; therefore,

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That the above and foregoing contract, made and entered into on the 18th day of May, 1898, by the City of Indianapolis, Indiana, by and through its Board of Public Works, and the New Telephone Company, be and the same is hereby in all things ratified, confirmed and approved, and the said New Telephone Company is hereby granted the rights and privileges, for the time herein mentioned, as in said contract and agreement set forth, in accordance with and subject to the terms, provisions, conditions and limitations thereof.

SEC. 2. An emergency existing for the immediate taking effect of this ordinance, the same shall be in full force and effect from and after its passage.

Which was read a first time and referred to Committee on Contracts and Franchises.

By Mr. Smith:

G. O. No. 42, 1898. An ordinance requiring the Lake Erie & Western Railroad Company and the Chicago, Indianapolis & Louisville Railroad Company to station and maintain one flagman at the crossing of Twentieth street by the tracks of said companies, and fixing a time for its taking effect.

Section 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That the Lake Erie & Western Railroad Company

and the Chicago, Indianapolis & Louisville Railroad Company (formerly the Louisville, New Albany & Chicago Railroad Company) be and the same are hereby required to station and maintain, at their expense, a flagman at the crossing of Twentieth street by the tracks of the said companies, which flagman shall be on duty at such point at all times during each day, so as to give proper warning to persons crossing such tracks at that point of the approach of engines, trains or cars upon either and both of such tracks.

Sec. 2. The said railroad companies, mentioned herein, shall be jointly and severally liable for a violation of the provisions hereof. For a violation of the provisions of Section 1 of this ordinance, either or both of said railroad companies shall be fined in any sum not less than ten dollars nor more than fifty dollars, and each day of failure to comply with such provisions shall be deemed a separate offense.

Sec. 3. This ordinance shall be in force from and after its publication once each week for two consecutive weeks in the Indianapolis Sentinel, a daily newspaper having a general circulation in said city.

Which was read a first time and referred to Committee on Public Safety and Comfort.

By Mr. Moffett:

G. O. No. 43, 1898. An ordinance to amend Subdivision 2 of Section 7 of an ordinance entitled "An ordinance authorizing the employment of certain clerks, assistants and employes, and providing for their compensation; providing for the compensation of certain officers, heads of departments, clerks and employes; fixing the compensation, salaries and wages of certain officers, clerks and employes of the City of Indianapolis, Indiana; repealing conflicting ordinances, and fixing the time when this ordinance shall take effect," approved January 18, 1894, and fixing the time when same shall take effect.

Section 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That Subdivision 2 of Section 7 of an ordinance entitled "An ordinance authorizing the employment of certain clerks, assistants and employes, and providing for their compensation; providing for the compensation of certain officers, heads of departments, clerks and employes; fixing the compensation, salaries and wages of certain officers, clerks and employes of the City of Indianapolis, Indiana; repealing conflicting ordinances, and fixing the time when this ordinance shall take effect," approved January 18, 1894, be and the same is hereby amended to read as follows:

2. For the City Dispensary:

The Superintendent of the City Dispensary shall receive a salary at the rate of eight hundred dollars per annum.

One physician of the City Dispensary shall receive a salary at the rate of five hundred dollars per annum.

One physician of the City Dispensary shall receive a salary at the rate of five hundred dollars per annum.

The Drug Clerk of the City Dispensary shall receive a salary at the rate of three hundred and sixty dollars per annum.

The Matron of the City Dispensary shall receive a salary at the rate of five hundred and forty dollars per annum.

The Janitor of the City Dispensary shall receive a salary at the rate of thirty-five dollars per month or four hundred and twenty dollars per annum.

Sec. 2. This ordinance shall be in full force and effect from and after its passage.

With the following communication:

DEPARTMENT OF PUBLIC HEALTH AND CHARITIES, }
 CITY OF INDIANAPOLIS, }
 INDIANAPOLIS, IND., April 29, 1898. }

Mr. E. M. Johnson, City Comptroller:

Dear Sir—At a meeting of this Board held on the 22d inst., I was directed to ask you to recommend an appropriation sufficient to increase the salary of Patrick King, janitor at the City Dispensary, from \$20 to \$35 per month. Superintendent Spencer was present and clearly convinced the Board that Mr. King is entitled to the increase asked for.

Very respectfully,

E. D. CLARK,
Secretary.

Which was read a first time and referred to Committee on Fees and Salaries.

MISCELLANEOUS BUSINESS.

Mr. McGrew offered the following motion:

Mr. President:

I move that the Committee on Contracts and Franchises, to whom was referred G. O. No. 41, 1898, be ordered to report on same at next meeting of Council.

Which motion was adopted.

On motion of Mr. Colter, the Common Council, at 8:20 o'clock, p. m., adjourned.

Geo. H. Mahoney

President.

ATTEST:

Chas H Stuckmeyer

City Clerk.