

ORDINANCE NO. 5
TOWN OF CLOVERDALE, INDIANA

ORDINANCE APPROVING A STREET LIGHTING CONTRACT WITH
PUBLIC SERVICE COMPANY OF INDIANA, INC.

WHEREAS, the TOWN OF CLOVERDALE, Putnam County, Indiana, acting by and through the BOARD OF TRUSTEES of said Town, desires to enter into a contract with PUBLIC SERVICE COMPANY OF INDIANA, INC., for overhead street lighting service, which said contract is in words and figures as follows, to-wit:

AGREEMENT AND CONTRACT

FOR

OVERHEAD STREET LIGHTING SERVICE

between

PUBLIC SERVICE COMPANY OF INDIANA, INC.

and

_____ TOWN OF CLOVERDALE _____, INDIANA

Date entered into . August 3rd 1961

Date approved by PUBLIC SERVICE
COMMISSION OF INDIANA . _____

Date service commenced _____

Date of expiration of fixed term _____

(After last date, agreement continues and is binding until 60 days' notice
by either party.)

AGREEMENT FOR OVERHEAD STREET LIGHTING SERVICE

THIS AGREEMENT made and entered into this day of, 19 61, by

and between the Town of CLOVERDALE, a municipal corporation in Putnam County and organized under the laws of the State of Indiana, acting by and through its BOARD OF TRUSTEES

..... (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 overhead street lighting system in conjunction with and as a part of its general overhead electric distribution system, and Company will furnish electric energy, all for the purpose of furnishing overhead street lighting service to Municipality.

SECTION II. A detail of the locations of the lamps to be supplied for said overhead street lighting system and the respective sizes of such lamps is set forth on the print hereto attached, bearing print No. A-7341, 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:

0 — 1000 lumen 34 — 2500 lumen 0 — 4000 lumen 0 — 6000 lumen 13 — 10000 lumen

SCHEDULE OF LAMPS

SECTION III. Except as otherwise provided in this agreement, Municipality shall pay Company for the operation of said overhead 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

Each lamp at.....	\$14.52	\$20.52	\$27.48	\$34.56	\$46.56
	<i>1000 lumen</i>	<i>2500 lumen</i>	<i>4000 lumen</i>	<i>6000 lumen</i>	<i>10000 lumen</i>

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 credits hereinafter provided for in SECTION V, paragraph (10), shall be in the following amounts:

SCHEDULE OF OUTAGE CREDITS

<i>Size of Lamp</i>	<i>Outage Credit</i>
1000 lumen.....	4c per night
2500 lumen.....	6c per night
4000 lumen.....	8c per night
6000 lumen.....	9c per night
10000 lumen.....	13c per night

SECTION V. The operation of the said overhead 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, towers, masts, poles, posts, transformers, lamps, fixtures and other appliances and structures for furnishing overhead street lighting service to Municipality. The ownership of the property comprising said overhead 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 overhead 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 overhead 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 overhead street lighting system shall be on an "all-night" schedule which provides that lamps are to be lighted from approximately one-half (1/2) hour after sunset until approximately one-half (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 overhead street lighting system.

(4) **Continuity of Service.** Company does not guarantee uninterrupted service from the overhead 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 overhead 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 overhead 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 overhead 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 Lamps.** Company shall, subject to the conditions stated hereinbelow, install additional overhead lamps of any of the standard sizes included in this agreement at such locations as may be legally ordered in writing by Municipality. Municipality agrees that the size of lamp as specified in its order shall not be reduced during the term of this agreement, and also agrees that each additional lamp ordered by Municipality shall, for the purpose of arriving at the minimum number of lamps to be operated by Company and paid for by Municipality under the terms of this agreement, be added to the minimum number set out in "SCHEDULE OF LAMPS."

Any additional lamp or lamps so ordered shall be operated and maintained subject to the same terms and conditions which apply to the original installation. Municipality shall accept service from and pay for any such additional lamp or lamps so long as this agreement remains effective. The ownership of all additional lamps, equipment and system installed in accordance with the terms hereof shall be and remain in Company and shall be subject to removal and/or other use by Company in the same manner as property originally installed or furnished hereunder.

Company shall install, at its own expense, any additional lamp or lamps ordered by Municipality, provided however, that the cost of installing any such additional lamp or lamps does not exceed five times the annual amount to be paid by Municipality (at the rates set out herein under "SCHEDULE OF RATES") for street lighting service from the additional lamp or lamps ordered. If the cost of installing any such additional lamp or lamps shall exceed five times the annual amount to be paid by Municipality for said street lighting service from such additional lamp or lamps ordered, then such excess cost of installing such lamp or lamps shall be paid for by Municipality.

Company shall install any additional lamp or lamps as soon as practicable after the receipt by Company of the written order from Municipality. Such order shall not require Company to install additional lamps at any time prior to thirty (30) days nor later than ninety (90) days after receipt by Company of such order.

(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, and such additional lamps as may be installed in accordance with paragraph (7) above; 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 overhead 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 overhead 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 and for any additional lamps supplied under the provisions of paragraph (7) above. After such bills have been presented for overhead 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 overhead 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 overhead 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 overhead 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 overhead 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 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 overhead street lighting service for the current month in accordance with the provisions of the "SCHEDULE OF OUTAGE CREDITS."

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 there be any change in the rates charged by Company for similar street lighting service to municipalities of the same class as the municipality which is a party to this agreement, the latter shall have the right to receive the same rates by entering into a new agreement therefor.

SECTION VI. This agreement shall become effective and binding upon the parties hereto when and as soon as it is approved by PUBLIC SERVICE COMMISSION OF INDIANA. Service under this agreement shall commence as soon as practicable, but in no event later than thirty (30) 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 fixed term of this agreement during which Municipality shall take and Company shall render service hereunder shall be five (5) years from the said date when service commences hereunder, and after the said original fixed term of five (5) years this agreement shall continue in force and effect until one of the parties hereto gives the other party hereto sixty (60) days' written notice of its intention to discontinue the furnishing or receiving of service hereunder.

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 overhead street lighting service is supplied by Company to Municipality, and all such other agreements as to overhead street lighting service insofar as they cover overhead 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 overhead 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 overhead 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 duly affixed to such quadruplicate copies, and properly attested, all as of the day, month and year first above written.

Town of Cloverdale, Indiana,

By BOARD OF TRUSTEES

SIGNATURES UNNECESSARY ON THIS PAGE

ATTEST:

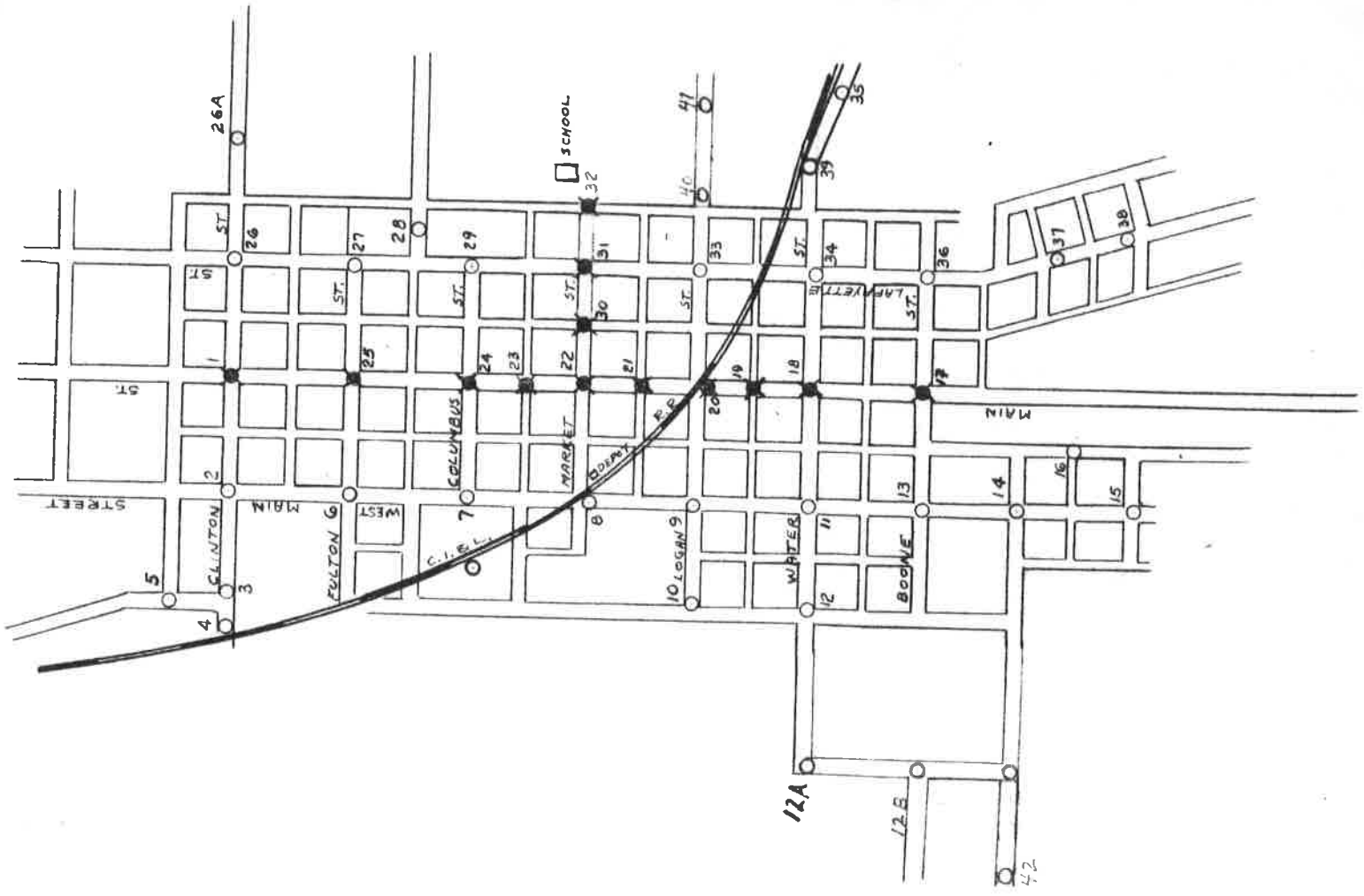
Clerk-Treasurer

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

By _____
Vice President

ATTEST:

Secretary



○ 2500 LUMEN LAMP

■ 10000

EXHIBIT "A"

DR. L.I.H.	COR.	5-21-46	TITLE	STREET LIGHTS
TR. W.W.	APP.	REV. 3-14-46	DETAIL	OVERHEAD STREET LIGHTS
CK.	DATE	9-22-36	SCALE	CLOVERDALE
				A-7341

; and

WHEREAS, all acts, conditions and things precedent to the execution by the TOWN OF CLOVERDALE of the said contract have happened and been properly done in regular and due form as required by law.

NOW, THEREFORE, Be it Ordained by the BOARD OF TRUSTEES of the TOWN OF CLOVERDALE, Putnam County, Indiana, as follows, to-wit:

1. That the TOWN OF CLOVERDALE do make and enter in- to the aforesaid contract with PUBLIC SERVICE COMPANY OF INDIANA, INC., for the installation, operation and maintenance of the overhead street lighting system more particularly described in said contract, and for the street lighting service to be rendered in accordance with the terms and conditions of the said contract; and that said contract, in the form set forth, be, and the same is hereby, approved; that the President and BOARD OF TRUSTEES of said Town are authorized to execute the same in the name of, and for, and in behalf of said Town, and the Clerk-Treasurer is authorized to attest the same with his signature and affix thereto the corporate seal of said Town; and that when said contract is executed either by the President or a majority of the BOARD OF TRUSTEES and attested by the Clerk-Treasurer, is duly executed by PUBLIC SERVICE COMPANY OF INDIANA, INC., and has been approved by PUBLIC SERVICE COMMISSION OF INDIANA as provided therein, it shall be in full force and effect.

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

Passed, approved and signed this 3rd day of August 1961.

ATTEST:

Ed M. Mount
Clerk-Treasurer

Robert Davis
President of BOARD OF TRUSTEES
Town of Cloverdale, Indiana.