

RESOLUTION NO. 27-13
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gosham ON THE 17th
DAY OF JUNE, 2013.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT
WITH FEZCO DLP, LLC FOR PROPERTY LOCATED IN
WASHINGTON TOWNSHIP.

WHEREAS, the City and FEZCO DLP, LLC, the owner of property located in
Washington Township, have successfully negotiated a Pre-annexation Agreement
to allow property to be annexed into the City; and

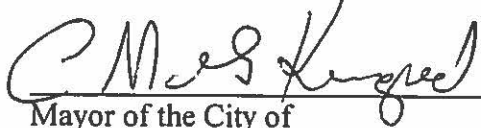
WHEREAS, this Council has determined that it would be in the best interests of
the citizens of Centerville to enter into said agreement.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into a Pre-
Annexation Agreement with FEZCO DLP, LLC to allow for the annexation of
property located in Washington Township in accordance with the terms of said
agreement, a copy of which is attached hereto as Exhibit "A" and incorporated
herein.

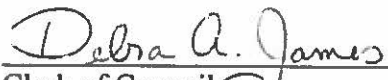
Section 2. This Resolution is to take effect at the earliest time allowed by law.

PASSED THIS 17th day of June, 2013.



Mayor of the City of
Centerville, Ohio

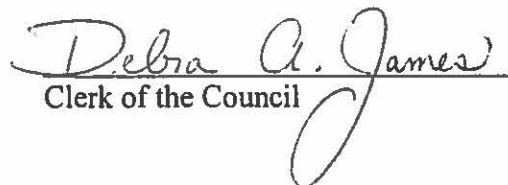
ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 27-13, passed by the Council of the City of Centerville, Ohio on the 17th day of June, 2013.


Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement is entered into this ___ day of _____, 2013, by and between the City of Centerville, an Ohio municipal corporation (hereinafter "City"), and FEZCO DLP, LLC, a real property owner in Washington Township, Montgomery County, Ohio (hereinafter referred to as "Petitioner").

WHEREAS, the undersigned Petitioner or Petitioners are the owners of property, located at 9010 Dayton-Lebanon Pike (Parcel #O67-03811-0052) near the corner of Spring Valley Road and State Route 48 in Washington Township, Montgomery County, Ohio, which property is contiguous with other property that is contiguous to and owned by the City; and

WHEREAS, the undersigned Petitioner or Petitioners wish to annex their property to the City; and

WHEREAS, both parties wish to cooperate in facilitating the annexation of the territory;

NOW, THEREFORE, in consideration of the following, Petitioner or Petitioners and City hereby agree as follows:

Section 1: Annexation Petition. The City at its cost will prepare and provide an annexation petition, map, and description to Petitioner or Petitioners in the appropriate form. The Petitioner or Petitioners agree upon presentation to sign the annexation petition agreeing to annex the territory described in this Agreement to the City and appointing Nathan E. Cahall as the petitioner's agent. The annexation petition may be filed solely containing the Petitioner's property or may be filed as a joint annexation petition with other parcels so long as all other territory so joined is supported by one hundred (100%) of the owners of such territory as defined by Ohio Revised Code Section 709.02 (E) at the time of signing. The petition will be filed with the Montgomery County Board of County Commissioners within thirty (30) days of obtaining the last owner's signature. The City agrees that all costs and expenses associated with petitioning for the annexation will be borne by City unless the Petition is withdrawn by the Petitioner as described in Section 3 of this Agreement. Should Petitioner or Petitioners desire their own attorney to represent their interests with regard to the annexation petition, those costs will be borne by Petitioner or Petitioners. Once this Agreement is signed and accepted by City, the Petitioner or Petitioners agree that they will not remove their names from the petition and will continue to support the annexation to the City throughout the entire annexation process, including any appeal or court action provided such is at no further expense to Petitioner or Petitioners and as long as the annexation, appeal, or court action is supported by the City. Petitioner or Petitioners will cooperate with City in attending or presenting any necessary information or testimony before the Montgomery County Board of County Commissioners or court of competent jurisdiction as requested by City. If necessary, and at City's request, Petitioner or Petitioners will appear at the review of the petition before the Montgomery County Board of County Commissioners and at any subsequent court hearings on appeal.

Section 2: Service Resolution. The City agrees to enact and file the appropriate service resolution with the Montgomery County Board of County Commissioners within twenty

(20) days of the filing of the annexation petition stating the services that would be provided to the area sought to be annexed and the approximate time such services would be provided. The City further agrees to adopt an ordinance or resolution stating that if the territory is annexed and becomes subject to zoning by the City and the zoning permits uses in the annexed territory that the City determines are clearly incompatible with the uses permitted under the current zoning on the adjacent land that remains within the township, the City will require in the rezoning ordinance the owner to provide a buffer separating the uses in the annexed territory from the adjacent township uses as set out by law. The City further agrees, if necessary, to appear by its designated representative at the review before the Montgomery County Board of County Commissioners in support of the petition.

Section 3: Acceptance of the Annexation. The land sought to be annexed is currently shown on the zoning map of Washington Township as B-2 General Business District. The City recognizes that the Petitioner wishes to rezone the land sought to be annexed to B-2 General Business District under the City of Centerville Unified Development Ordinance which is in keeping with its comprehensive development plan. The parties understand that the rezoning of the property will take place utilizing the regular process for processing an application for rezoning in the City and there is no guarantee that any particular zoning will be granted. The City agrees that once an annexation petition has been filed with the Montgomery County Board of Commissioners, the City will accept a rezoning application and major site plan application for the Petitioner's property and will begin the administrative processing of such applications, including any necessary hearings and other preliminary matters. Petitioner agrees to file said applications no later than July 8, 2013. Any approvals granted will be contingent upon finalization of the annexation. After approval of the annexation is granted by the Board of County Commissioners and prior to the City accepting the annexation, Petitioner may withdraw its annexation request by directing Petitioner's agent in writing at least five (5) business days in advance of the desire to withdraw. Petitioner may only withdraw its annexation request in the event the City fails to approve the proposed rezoning and major site plan applications. If Petitioner exercises the option to withdraw its request under this Section, petitioner agrees to pay for all costs incurred by the City related to the filing and processing of the annexation petition up to the date of withdrawal, not to exceed \$2,500.00.

Section 4: Condition Precedent. Both parties acknowledge and agree that this Agreement is effective at the earliest period allowed by law.

Section 5: Miscellaneous. This Agreement and the rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and shall inure to the benefit of and be binding on the respective successors and assigns.

This Agreement supersedes any and all prior agreements, arrangements, negotiations, letters of understanding and acknowledgements between City and Petitioner or Petitioners, or any related party, relative to matters contained herein whether oral or written. No amendment, modification or alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

If for any reason any one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid by any court of law or duly authorized public body such determination shall not

affect, impair, or invalidate the remaining provisions of this Agreement but shall be confined in its operation to the specific articles, sections, sentences, clauses or parts of the Agreement in any one or more instance shall not prejudice in any way the validity of the Agreement in any other instance nor shall such finding alter the understandings of both parties as to the intent of this Agreement and both parties agree to use their best efforts to bring to fruition the results contemplated in this Agreement regardless of the findings of any court of law of other duly authorized public body.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

This Agreement is executed this ____ day of _____, 2013, by the City of Centerville, Ohio, and FEZCO DLP, LLC, and is effective upon the date provided above.

PETITIONER

Date: _____, 2013

By: _____
Its: _____

This Agreement was authorized by the City of Centerville by Resolution No. _____ adopted on _____, 2013 at an open meeting and in accordance with the laws of the state of Ohio, and the ordinances and Charter of the City of Centerville, and is executed by the City Manager this _____ day of _____, 2013 in accordance with such authority and is effective at the earliest date as provided by law.

CITY OF CENTERVILLE, OHIO

Date: _____, 2013

By: Gregory B. Horn
Its: City Manager

Approved as to form:

Scott A. Liberman
Municipal Attorney

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