

RESOLUTION NO. 7-11
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gresham ON THE
21st DAY OF February, 2011.

A RESOLUTION AUTHORIZING THE CITY
MANAGER TO ENTER INTO AN ELECTRIC
GENERATION SUPPLY AGREEMENT WITH DPL
ENERGY RESOURCES, INC. (DPLER) FOR
MUNICIPAL ACCOUNTS.

WHEREAS, the City is part of a consortium of twenty municipalities formed to collectively negotiate an electric generation supply agreement with DPL Energy Resources, Inc. (DPLER), and

WHEREAS, the cooperative negotiating process has produced an agreement with rates that will significantly reduce the City's cost for electric generation and transmission services, and

WHEREAS, the savings for electric supply under the agreement will lower the City's operating costs.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE, STATE OF OHIO, HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to enter into an agreement with DPL Energy Resources, Inc. for electric generation supply for the period from March 1, 2011 to December 31, 2012, a copy of said agreement is attached hereto, marked Exhibit "A" and incorporated herein.

Section 2. That this resolution becomes effective at the earliest date allowed by law.

PASSED this 21st day of February, 2011.

C. Mark Krueger
Mayor of the City of Centerville, Ohio

ATTEST:

Julia M. Weaver
Assistant Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 7-11, passed by the Council of the City of Centerville, Ohio, on the 21st day of February, 2011.

Julia M. Weaver
Assistant Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

DPL ENERGY RESOURCES – GENERATION SUPPLY AGREEMENT**Terms and Conditions of Service**

This Energy Service Agreement ("Agreement") is entered into on _____, 2011 ("Effective Date"), by and between DPL Energy Resources, Inc. ("DPLER"), a subsidiary of DPL Inc. ("DPL") located at 1065 Woodman Drive, Dayton, Ohio 45432, and the City of Centerville ("Customer"), located at 100 West Spring Valley Road, Centerville, Ohio 45458.

1. **Authorized Locations.** This Agreement relates only to the Customer account numbers and locations listed on Appendix A ("Participating Accounts").
2. **Nature of the Services.** Upon execution of this Agreement by both parties,
 - a) DPLER agrees to provide Electric Generation Service ("Service") to meet the Customer's full usage requirements at the Facilities listed on Appendix A. In return, the Customer agrees to receive and pay for that Service; and
 - b) DPLER will provide Customer with access to *Entelligence*, our Internet-based power monitoring software, at no additional charge for locations listed on Appendix A that either have or are required to install an interval meter. DPLER will also provide hands-on training for the software, if requested.
3. **Term.** Service hereunder shall commence after DP&L processes Customer's enrollment on Customer's next available meter read after Agreement is signed, and will continue through Customer's meter reading date in December, 2012 (the Initial "Term").
4. **Price.** The Customer shall continue to pay The Dayton Power and Light Company (DP&L, or the "Host Utility") for distribution (delivery) service including all charges of DP&L that are approved by the Public Utilities Commission of Ohio for recovery by DP&L from customers irrespective of whether the customer obtains an alternate supplier for electric energy. The price to Customer for electric generation service received under this Agreement shall be \$0.0595 per kilowatt hour for the Term of this Agreement.
5. **Billing and Payments** - DPLER will arrange for Customer to be invoiced by The Dayton Power and Light Company (DPL, or the "Host Utility") or DPLER for the Service provided pursuant to this Agreement during the preceding month. If billed by the electric utility provider ("Host Utility"), the Customer will continue to pay its bill in accordance with the Host Utility's billing and payment policies. If billed by DPLER, Customer will pay such invoices to DPLER in accordance with billing and payment policies that mirror those of the Host Utility. The billing format to Customer shall remain in the same "summary format" utilized by DP&L and DPLER prior to this Agreement.
6. **Billing Adjustments.** All bills are subject to future adjustment to account for corrected usage readings or errors attributable to any preceding month. All bills will be considered final after 24 months of the bill date.
7. **Events of Default and Remedies.**
 - a. **Definition.** An "Event of Default" shall mean, with respect to a Defaulting Party, the occurrence of any of the following: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure; (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if not cured within five (5) Business Days; (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive where such Party has made payments due for such failure to deliver or receive,) if such failure is not remedied within five (5) Business Days after written notice; (d) such Party 1) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, 2) makes an

assignment or any general arrangement for the benefit of creditors, 3) otherwise becomes bankrupt or insolvent (however evidenced), or 4) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets as part of bankruptcy proceeding or reorganization for the benefit of creditors; (e) or: a Party consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement. For purposes of this section, a material change in usage shall not be considered an event of default.

- b. Remedy. If an Event of Default occurs and is continuing, the non-defaulting Party ("the Non-Defaulting Party") may, at its option and in its sole discretion, 1) suspend its performance under this Agreement, or 2) terminate this Agreement. At the time of such Early Termination, the Non-Defaulting Party shall have the right to terminate this Agreement and to demand payment of a settlement amount, which the defaulting Party ("the Defaulting Party") shall pay upon invoice by the Non-Defaulting Party. If Customer is the Defaulting Party, the settlement amount shall be equal to the sum of: a) any unpaid invoices plus, b) result of multiplying: (i) the positive difference (if any) of the Contract Price minus the Market Price by (ii) the quantity of electric energy, capacity, transmission, ancillary services losses and any other product or service specified in Article 2, for the remaining term of the agreement. If DPLER is the Defaulting Party, the settlement amount shall be equal to: a) result of multiplying: (i) the positive difference (if any) of the Market Price minus the Contract Price by (ii) the quantity of electric energy, capacity, transmission, ancillary services, losses and any other product or service specified in Article 2, for the remaining term of the agreement, minus b) any unpaid invoices by Customer to DPLER.

Any such calculation shall be discounted to present value, plus other costs, expenses and charges under this Agreement which the Non-Defaulting Party incurs as a result of such Early Termination, in addition and without prejudice to any right of setoff, recoupment, combination of accounts, lien or other right to which the Non-Defaulting Party is otherwise entitled, whether by operation of law, equity, contract or otherwise as a result of the Event of Default and early termination of this Agreement. "Contract Price" shall mean the price specified in Article 4 for the electrical energy, capacity, transmission, ancillary services, losses and any other product or service specified in Article 2. "Market Price" shall mean the amount, as determined by the Non-Defaulting Party, that a bona fide third party would pay for the electrical energy, capacity, transmission, ancillary services, losses and any other product or service specified in Article 2, at the then current prevailing energy prices. The non-Defaulting Party may consider, among other things, quotations from the leading dealers in the wholesale energy industry, internally developed forward market prices and other bona fide third party offers as commercially available to the Non-Defaulting Party, which will be adjusted, as necessary, for the period and differences in transmission costs, volume, and other factors, as reasonably determined by the Non-Defaulting Party.

8. Load Change Information. The Customer shall give DPLER at least thirty (30) days notice prior to any planned business changes that result in significant changes in load, such as adding or removing a facility.

The Parties recognize that the price for Electric Generation Service under this Agreement is predicated on DPLER's view of the costs incurred to serve the customer. That view is at least partially based on the continuation of a specified energy usage level and consumption pattern. In the event that Customer's usage level and/or consumption pattern experience a material change, Customer and DPLER agree to negotiate in good faith to modify this agreement, if necessary, to account for the impact of the material change on DPLER's cost to serve.

9. Successors and Assigns. The Parties' obligations shall be binding on any successors and assigns. Either Party may assign this Agreement and any related appendices with the written consent of the other Party which consent may not be unreasonably withheld, delayed and/or conditioned. Such assignment must be executed in writing by both Parties and in a form acceptable to the non-assigning party.

10. Interval Meter & Phone Line. Interval Meters are required for accounts with a maximum annual peak demand greater than or equal to 100 kW for the most recent twelve-month period. DPLER will pay to DP&L the acquisition and installation charges for the required interval metering. In the event that Customer elects, or is required, to receive generation service from any entity other than DPLER, its successor or assignee, including Customer's return to DP&L Standard Service Offer, DPLER, its successor or assignee may require Customer to reimburse it for the amount paid to DP&L for the interval meter and its installation. Interval metered customers are required, by DP&L tariff, to install a dedicated telephone line to the interval meter. Customer is entirely responsible for the telephone line installation and any ongoing or extraordinary costs related thereto.

DPLER may, at its sole discretion, choose to terminate this Agreement if Customer neglects or refuses to sign the Interval Meter Request Form or install the telephone line as required by the DP&L Electric Generation Service, Alternate Generation Supplier Coordination Tariff, Sheet No. G8, within 7 days of written request.

11. Warranty. THE GENERATION SERVICE SOLD UNDER THIS AGREEMENT WILL MEET APPLICABLE INDUSTRY QUALITY STANDARDS AND BE FREE OF ALL LIENS AND ADVERSE CLAIMS. NEITHER CUSTOMER NOR DPLER MAKES ANY REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, AND CUSTOMER AND DPLER EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DISTRIBUTION SERVICES SHALL BE THE RESPONSIBILITY OF THE HOST UTILITY, AND DPLER SHALL HAVE NO LIABILITY RELATED TO UTILITY'S FAILURE TO MEET ANY DISTRIBUTION RELATED OBLIGATION.
12. Indemnification. Before the point at which title passes, DPLER will defend, indemnify and hold Customer harmless from any and all third party claims (including claims for personal injury, death, or property damage), losses, expenses (including attorneys fees), damages, suits, causes of action and judgments of any kind related to Customer's obligations hereunder. The Host Utility tariffs shall define any and all liability and indemnification provisions as between Customer and Host Utility applicable to Host Utility's provision of delivery service from and after the point at which title passes.
13. Title. Title to the electricity will pass from DPLER to Customer at the point of interconnection between a third party transmission or distribution system and the Host Utility's transmission or distribution system.
14. Release of Information Between DP&L and DPLER. The parties recognize that Customer information is necessary for DPLER to provide service under this Agreement. Customer authorizes DP&L to provide DPLER with any and all Customer information, including but not limited to; all energy consumption records, rate, billing, data, and projection information as long as DPLER will treat such information as confidential. Customer agrees that DPLER may provide a copy of this Agreement to DP&L as necessary and hereby authorizes and instructs DP&L to treat a copy of this Notice as an original. This authorization is valid during the Term of the Agreement.
15. Force Majeure. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement (except for the obligation to pay money), if its failure to perform or delay in performing was caused by or results, directly or indirectly, from Force Majeure. "Force Majeure" means causes beyond the reasonable control of the Party claiming Force Majeure that delay or prevent that Party from performing its obligations. For purposes of this Agreement, Force Majeure shall include, without limitation: declaration by the LDC, a control area, transmission operator or reliability council of the electric transmission or distribution system of an emergency condition requiring curtailment of power supply or interruption or curtailment of required firm transmission on the electric transmission or distribution system; flood; earthquake; storm; drought; fire; pestilence; lightning; other natural catastrophes; epidemic; war; riot; civil disturbance or disobedience; strike; labor dispute; labor or material shortage; sabotage; government priorities; restraint by court order; and action or non-action by, or inability to obtain necessary authorizations or approvals from, any government agency or authority; provided, however, that a general change in market conditions shall not in and of itself constitute Force Majeure. A Party that is delayed in performing or rendered unable to fulfill any of its obligations under this Agreement by Force Majeure shall notify the other Party in writing as

soon as possible and shall exercise due diligence to attempt to remove such inability with all reasonable dispatch. Nothing contained in this Section shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. If the Force Majeure event continues for more than thirty (30) days, the performing party can terminate the Agreement by providing the non-performing party written notice. Termination for an extended Force Majeure event shall not constitute an event of default under the terms of the agreement.

16. Actions of Governmental and Regulated Entities – If action is taken by the, applicable regional transmission organization, transmission provider, or any federal, state or local governmental authorities which materially changes the amounts charged by such entities to DPLER or charged by such entities to DPLER's wholesale supplier and flowed-through to DPLER, or which materially changes the manner in which DPLER provides Service to Customer, DPLER may, upon written proof of the additional charges, elect to adjust the Price for Service under this Agreement to account for any such cost increases.

Customer may elect, no later than fourteen (14) days following the provision by DPLER of this written notice and supporting information, to terminate this Agreement by providing thirty (30) days advance written notice of termination to DPLER.

Customer's election to terminate this Agreement pursuant to this provision shall not be considered an Event of Default, but DPLER's remedy for Customer's termination shall be as described for a Non-Defaulting Party, and Customer shall be obligated to pay the termination settlement amount, pursuant to Section 7.b Notwithstanding the foregoing, Customer's election to terminate this Agreement pursuant to this provision shall obligate Customer to pay to DPLER an amount that is no less than DPLER's anticipated gross margin over the remaining unexpired term of this Agreement, and under no circumstances shall DPLER be required to make any payment to Customer if Customer terminates this Agreement pursuant to this provision.

17. Counterparts; Copies. This Agreement may be executed by the parties in several counterparts which when taken together shall be deemed to be one original, and/or may be executed in multiple copies, each of which shall be deemed an original. All true and accurate copies of this fully executed Agreement shall be valid and binding evidence of the Agreement of the parties, whether the document and/or any or all of the signatures are reproductions of an original by photocopy, facsimile or email transmission, or other method commonly accepted as accurate.
18. Necessary Approvals. The parties acknowledge that this Agreement shall not be effective unless and until it has been duly ratified and approved via city legislation passed by the Customer's City Council, which city legislation shall specifically authorize the Customer to enter into and perform this Agreement and shall furthermore authorize the Customer's City Manager to execute this Agreement on behalf of the Customer.
19. Certificates of Availability of Funds. Upon execution of this Agreement, Customer agrees to cause the Certificate of Availability of Funds set forth on the last page of this Agreement to be duly executed by Customer's fiscal officer, which shall certify that the amount to be paid by Customer hereunder has been lawfully appropriated for such purpose and is in the treasury of Customer or in the process of collection to the credit of payment of the amount due free from any previous encumbrances. Following the initial fiscal year of the Term of this Agreement, Customer further agrees that upon receipt of written request by Customer from DPLER, a Certificate of Availability of Funds will be issued and forwarded to DPLER for attachment to this Agreement for the second fiscal year of this Agreement.
20. Supplementary Disclosures
Applicable to All Accounts:
- a) Customer may be charged a switching fee by the Host Utility.
 - b) Customer shall have the right to request Customer's payment history from DPLER for the 24 month period predating the request without charge.
 - c) DPLER may be contacted as follows:
 - By mail at 1065 Woodman Drive, Dayton, Ohio 45432;
 - By telephone at (937) 259-7858 or toll-free at 1-888-316-2393;

- DPLER business hours are 8:00 AM to 5:00 PM Eastern Prevailing Time, Monday through Friday.
- d) In the event that Customer is unable to resolve a dispute with DPLER after reasonable effort by both Parties, Customer may contact the PUCO toll-free at 1-800-686-7826, or for TDD/TTY toll-free at 1-800-686-1570, from 8 AM to 5 PM, Monday through Friday or at www.PUCO.ohio.gov.
- e) The environmental disclosure information is shown at DPLER's website, and Customer agrees that DPLER will make required quarterly updates electronically at such website and DPLER agrees to also send email notification to Customer of such update. DPLER will also provide the information directly to Customer at no charge upon request.
- f) DPLER will not release Customer's account number without Customer's affirmative written consent, or as otherwise required by law.

Applicable Only to Accounts with Annual Usage Less Than 700,000 kWh:

- g) Utility, Customer shall have a final opportunity to cancel the enrollment, and this contract, without penalty. The Host Utility will notify Customer in writing that Customer has been enrolled and that Customer has the right to cancel the enrollment, and this Agreement, by contacting the Host Utility within seven (7) calendar days of the postmark on the Host Utility's confirmation notice. Cancellations may be made by telephone or by written notice.
- h) Customer may terminate the contract without penalty in the event Customer moves to an electric distribution utility area where DPLER is not a certified supplier or to an electric distribution utility area where DPLER charges a different price.

DPL ENERGY RESOURCES, INC.
 ("DPLER")

CITY OF CENTERVILLE
 ("Customer")

By: _____

By: _____

Name: Scott J. Kelly

Name: _____

Title: President, DPL Energy Resources, Inc.

Title: City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Law Director

Date: _____

**CERTIFICATE OF FUNDS AVAILABILITY
BY CUSTOMER FISCAL OFFICER**

This signature certifies that \$_____ of the amount required to meet Customer's obligations under the subject Agreement, which amount exceeds what is required in the first fiscal year in which the Agreement is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A
Participating Accounts

1. Authorized Locations – This Agreement relates to the following Customer account numbers and locations ("Participating Accounts"):

<u>Account No.</u>	<u>Rate Number</u>	<u>Service Address</u>
<u>0024474991</u>	<u>117</u>	<u>255 W. Spring Valley Rd., Centerville, OH 45458</u>
<u>0238420938</u>	<u>117</u>	<u>166 N. Main St., Centerville, OH 45459</u>
<u>0325193795</u>	<u>117</u>	<u>3 E. Franklin St., Centerville, OH 45459</u>
<u>0635338656</u>	<u>117</u>	<u>Rt. 48 & Alex Bell, Centerville, OH 45459</u>
<u>1029041957</u>	<u>117</u>	<u>Clyo Rd. & E. Franklin St., Centerville, OH 45459</u>
<u>1950550461</u>	<u>117</u>	<u>Holiday Lighting, Centerville, OH 45459</u>
<u>3065938425</u>	<u>117</u>	<u>Gazebo, Centerville, OH 45459</u>
<u>3891968599</u>	<u>117</u>	<u>E. Alex-Bell & Loop Rd., Centerville, OH 45459</u>
<u>3898729821</u>	<u>117</u>	<u>Stubb's, Centerville, OH 45459</u>
<u>5076114620</u>	<u>117</u>	<u>1144 Water's Edge, Centerville, OH 45459</u>
<u>5219781914</u>	<u>117</u>	<u>Siren, Centerville, OH 45459</u>
<u>5527666574</u>	<u>117</u>	<u>1041 Yankee Trace, Centerville, OH 45459</u>
<u>5508978349</u>	<u>117</u>	<u>Gardenwood, Pond Pump, Centerville, OH 45459</u>
<u>5581951986</u>	<u>117</u>	<u>SEC Wilmington Pike & Miami Valley, Centerville, OH 45459</u>
<u>5629305471</u>	<u>117</u>	<u>Stubb's, Centerville, OH 45459</u>
<u>5937664229</u>	<u>117</u>	<u>Alex-Bell Rd. & Clyo, Centerville, OH 45459</u>
<u>6269330480</u>	<u>117</u>	<u>YT Comfort Station, Centerville, OH 45459</u>
<u>6289732186</u>	<u>117</u>	<u>Legendary Way Por, Centerville, OH 45459</u>
<u>6500980685</u>	<u>117</u>	<u>YT Maintenance, Centerville, OH 45459</u>
<u>6782084633</u>	<u>117</u>	<u>Benham's, Centerville, OH 45459</u>
<u>6904660486</u>	<u>117</u>	<u>Traffic Signal, Centerville, OH 45459</u>
<u>7458237091</u>	<u>117</u>	<u>10001 Paragon Rd., Centerville, OH 45459</u>
<u>8773965557</u>	<u>117</u>	<u>NEC I-675 @ Alex Bell Rd., Centerville, OH 45459</u>
<u>9617655811</u>	<u>117</u>	<u>6305 Far Hills, Centerville, OH 45459</u>
<u>9913356056</u>	<u>117</u>	<u>Stubb's, Centerville, OH 45459</u>
<u>0520705389</u>	<u>137</u>	<u>7970 S. Suburban Dr., Centerville, OH 45459</u>
<u>1708578216</u>	<u>137</u>	<u>Siren, Centerville, OH 45459</u>
<u>1721217503</u>	<u>137</u>	<u>YT Pond Pump, Centerville, OH 45459</u>

APPENDIX A
Participating Accounts

<u>Account No.</u>	<u>Rate Number</u>	<u>Service Address</u>
<u>3203868277</u>	<u>137</u>	<u>Municipal Bldg., Centerville, OH 45459</u>
<u>3205643426</u>	<u>137</u>	<u>Siren, Centerville, OH 45459</u>
<u>3596679200</u>	<u>137</u>	<u>Police Station, Centerville, OH 45459</u>
<u>3623436577</u>	<u>137</u>	<u>YT Pumphouse, Centerville, OH 45459</u>
<u>3643383931</u>	<u>137</u>	<u>YT Clubhouse, Centerville, OH 45459</u>
<u>6400915749</u>	<u>137</u>	<u>YT Clubhouse, Centerville, OH 45459</u>
<u>8072014772</u>	<u>137</u>	<u>YT Vintage Pump, Centerville, OH 45459</u>
<u>9446453640</u>	<u>137</u>	<u>Public Works, Centerville, OH 45459</u>