

RESOLUTION NO. 52-10
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Brooks Compton ON THE
20th DAY OF December, 2010.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LETTER OF INTENT WITH DPL ENERGY (DPLE) FOR STREET LIGHTING SERVICES FOR USE ON PUBLIC GROUNDS AND STREETS IN THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, STATE OF OHIO, FOR A PERIOD OF FIVE YEARS (5) COMMENCING JANUARY 1, 2011 AND EXPIRING ON DECEMBER 31, 2015 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT CONSISTENT WITH THE LETTER OF INTENT.

WHEREAS, the current street light agreement with DPLE expires on December 31, 2010; and

WHEREAS, the City of Centerville is part of a consortium of seventeen cities formed to jointly negotiate a new street light contract; and

WHEREAS, the cooperative negotiation process has produced a new street light letter of intent to form the basis of the Contract that is being recommended for approval by the regional negotiating committee; and

WHEREAS, the new street light Letter of Intent will be finalized into terms and conditions of a formal street light Agreement; and

WHEREAS, the new street light agreement will reduce the City of Centerville's cost for street lighting services and improve the on-going maintenance of the system; and

WHEREAS, the City Council wants to provide street lighting under the provisions of the new contract.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to enter into a letter of intent with DPL Energy for street lighting services on public grounds and streets consistent with the attached Miami Valley Communications Council Negotiation of Collective Street Lighting Agreement Letter of Intent, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

Section 2. That the City Manager is hereby authorized to enter into an Agreement that substantially complies and is consistent with the Letter of Intent, as determined by the City Manager and the Municipal Attorney.

Section 3. That this resolution becomes effective at the earliest date allowed by law.

PASSED this 20th day of December, 2010.

C. Mark Kinspeed
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 52-10, passed by the Council of the City of Centerville, Ohio, on the 20th day of December, 2010.

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



Miami Valley Communications Council

Technology for local governments

Centerville Germantown Kettering Miamisburg Moraine Oakwood Springboro West Carrollton

December 6, 2010

Scott Kelly, President
DPL Energy Resources
Miami Valley Lighting
1065 Woodman Drive
Dayton, OH 45432

Re: *Miami Valley Communications Council
Negotiation of Collective Street Lighting Agreement
Letter of Intent*

Dear Scott:

As you know, Miami Valley Communications Council ("MVCC") is facilitating the joint negotiation of a new street lighting agreement ("Agreement") on behalf of all of the municipalities set forth in footnote 1 below (the "Joint Municipalities" or individual "Municipality" as applicable).¹ The purpose of this binding letter of intent is to set forth the primary terms and conditions for a street lighting agreement between Miami Valley Lighting, LLC and DPL Energy Resources (jointly "DPLE") and the Joint Municipalities.

Upon execution of this letter of intent, the parties will proceed to finalize the terms and conditions of the agreement by way of a formal Street Lighting Agreement which will include all of the standard terms and conditions customarily incorporated into agreements of this nature.

- I. **Term of Agreement.** The term of this Agreement shall be January 1, 2011 through December 31, 2015.
 - A. **Modification and Extension.** Ninety (90) days prior to the expiration of the Agreement, the parties shall commence good faith negotiations for renewal of the Agreement. Should the parties be unable to agree on new terms and conditions thirty (30) days before the date the Agreement is to terminate, then either, on or before December 31, 2015, may provide the other party with written notice of termination. If the Agreement is not renewed or terminated for any reason, DPLE shall have a reasonable amount

¹ Beavercreek, Bellbrook, Brookville, Centerville, Englewood, Fairborn, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Sidney, Trotwood, Union, Vandalia, Xenia and West Carrollton

of time to remove all DPLE Fixtures (as hereinafter described) at its own cost and shall be responsible to remediate the right of way upon removal consistent with then current guidelines for right of way restoration. Any underground wiring connecting to any Fixture shall not be removed and shall be left in place in a condition acceptable for any future connection. In addition to the foregoing, if the Agreement is not extended by the parties, the Joint Municipalities shall not attempt to appropriate any DPLE owned street lighting assets through any type of appropriation proceeding or legislative action.

- II. **Scope.** DPLE shall provide the Joint Municipalities with full service street lighting and various additional street lighting services designed to illuminate the streets, roads, and public places within the Joint Municipalities.
- III. **Full Service Monthly Lighting Equipment Charges.** The individual prices for full service street lighting for poles, masts, luminaires, related wiring excluding underground electric service wiring (collectively "Fixtures"), and energy will be as set forth in Appendix A attached and incorporated herein by reference.
- IV. **New Installation Charges.**
 - A. **High Pressure Sodium Luminaires.** DPLE will offer the following product types for new lighting fixture installations effective January 1, 2011: 5800 HPS CO, 5800 HPS DG, 9500 HPS CO, 9500 HPS DG, 16000 HPS CO, 16000 HPS DG, 27000 HPS CO, 27000 HPS DG, 50000 HPS CO, 50000 HPS DG. There will be no charge for installation of new HPS luminaires on or after January 1, 2011.
 - B. **Poles.** DPLE will offer the following product types for new pole installations effective January 1, 2011: standard wood, 23' spun aluminum, and 30' spun aluminum. There will be no charge for wood pole installations. The charge for installing 23' spun aluminum poles will be \$650, and the charge for installing 30' spun aluminum poles will be \$600.
 - C. **Reservation of Rights.** The Joint Municipalities may, at their sole discretion, elect to pay for and install poles and fixtures at their sole expense, thereby owning same, and shall only pay the monthly regulated energy rate tariff to the regulated utility.
- V. **Fixture Inventory.** On or before April 1, 2011, DPLE shall provide each Municipality with a complete inventory of all Fixtures or components thereof contained within its corporate boundaries. The Fixture Inventory shall set forth the specific characteristics of all Fixtures or components thereof and GPS coordinates of all poles. Said Fixture Inventory list shall be maintained and updated by DPLE on an ongoing basis and published to the Joint Municipalities on an annual basis or upon request during the term of this Agreement or any

extension thereof. Any GPS coordinates and related data will be provided by DPLE on an "as-is" basis.

- VI. **Service Calls.** Each Municipality shall promptly report to DPLE all luminaires which fail to illuminate. The outage shall be reported utilizing the identification data fields provided in the Fixture Inventory. Service shall be restored for minor outages (lamp, photocell, fuse, wiring) within three (3) working days. DPLE will repair major outages (underground electric faults, fixture or pole replacements) within seven (7) working days. DPLE shall provide each Municipality a prorated credit for each reported luminaire not repaired within these time requirements. DPLE agrees to perform a study on the operational and financial feasibility of creating and implementing a web-based outage reporting system. The Joint Municipalities agree to cooperate with and provide DPLE any data or assistance necessary to perform such study and to create and implement the web-based outage reporting system.
- VII. **System Maintenance.** DPLE, as part of their service and maintenance obligations, shall repair and/or replace defective or broken components; test, repair and/or replace defective street light wiring; and paint and/or refinish luminaire and light pole surfaces. Additionally, DPLE agrees to implement a nighttime inspection system that shall occur at least once every three months for all of the street lighting systems contained within the Joint Municipalities. At least on an annual basis, DPLE shall conduct a daytime inspection for all of the street lighting systems contained within the Joint Municipalities for purposes of inspecting pole and wiring conditions. All inspections performed by DPLE shall be summarized in a combined written report with a breakdown of each Municipality that will state the date and time of inspection, nature of repairs made by specific pole location, and date repairs were made. All inspection reports by DPLE shall also be included in the web-based outage reporting system if determined to be operationally and financially feasible based upon the study to be performed as outlined in Section VI.
- VIII. **Capital Replacement Program (Light Poles).** DPLE shall jointly with each Municipality develop a Capital Replacement Program for light poles within each Municipality. Factors to consider in replacing light poles should include: years in service, physical condition, aesthetic considerations, and other factors jointly determined by DPLE and each Municipality. The cost of removal, installation and capital cost for light poles, replaced as part of the Capital Replacement Program shall be jointly negotiated and approved by DPLE and each Municipality.
- IX. **Right of Way Utilization and Relocation.** DPLE will be permitted to install and operate in the public right of way any of the Fixtures described in this letter of intent at no cost to DPLE for use of the public right of way for the street lighting system described in this letter of intent. Any such use of the public right of way shall be subject to the respective legally valid right of way ordinance for each Municipality. DPLE shall relocate any Fixture, at its cost, upon receipt of written

notice and instructions from a Municipality of a Municipality-driven relocation. The Joint Municipalities agree to pay for any temporary disconnection of street lighting fixtures consistent with the terms specified in Section 5 of the existing contract between DPLE and the Joint Municipalities.

X. **Dispute Resolution.** Should any dispute arise between the parties relative to the terms of the Agreement, the offended party shall be required to provide written notice to the offending party specifying the nature of the alleged breach (the "Breach"). Within three days of such written notice, the parties shall conduct a meeting in an effort to discuss and resolve the Breach. Thereafter, the offending party shall have a period of 30 days to either cure the Breach or provide sufficient evidence to the offended party's satisfaction that appropriate steps are being taken by the offending party to remedy the Breach. At the end of the 30 day cure period, the parties shall conduct a second meeting to make a determination whether or not the Breach has been cured and to work toward a resolution. If the Breach remains unresolved, the parties may either jointly agree to submit the matter to mediation within five business days, or in the alternative, either party may elect to submit the dispute to a court of law for litigation or to the American Arbitration Association for arbitration.

XI. **Miscellaneous.**

A. **Assignment.** DPLE shall have the right to assign the Agreement to a legally related entity of DPLE without prior written approval of the Joint Municipalities. Any other proposed assignment of this Agreement by DPLE shall require prior written approval of the Joint Municipalities, which consent shall not be unreasonably withheld or conditioned. For purposes of this Section XII.A., in determining reasonableness, the Joint Municipalities may consider such things as the prospective assignee's experience, financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the Agreement properly.

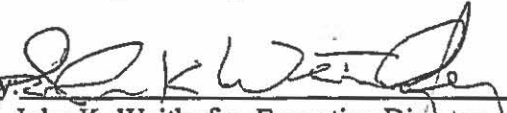
B. **Integration/Amendment.** The Agreement shall represent the entire agreement between the parties with respect to the subject matter thereof and shall supersede all prior or contemporaneous agreements whether written or oral between any of the Municipalities and DPLE, its predecessors-in-interest, subsidiaries, or affiliates. The Agreement may not be amended or modified except by a writing executed by both DPLE and the Joint Municipalities.

Scott, my thanks to you and your team for working with our team to reach a mutually satisfactory agreement. We will look forward to completing the formal written agreement in the very near future.

Very truly yours,

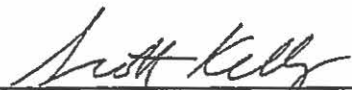
Scott Kelly, President
December 6, 2010
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THE JOINT MUNICIPALITIES
By Miami Valley Communications Council
Their Designated Agent

By: 
John K. Weithofer, Executive Director

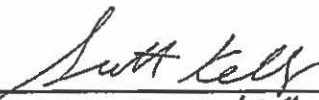
AGREED AND ACKNOWLEDGED:

DPL Energy Resources

By: 
Scott Kelly, President

Date Signed: 12/7/2010

Miami Valley Lighting, LLC

By: 
Name Printed: Scott Kelly
Title: President

Date Signed: 12/7/2010

Appendix A
Full Service Monthly Lighting Equipment Charges

Light/Pole Type ¹	Contract Year	Percentage ² Discount/(Increase)	Cumulative Discount
Mercury	2011	12%	12%
Mercury	2012	0%	12%
Mercury	2013	3%	15%
Mercury	2014	0%	15%
Mercury	2015	0%	15%
High Pressure Sodium ³	2011	12%	12%
High Pressure Sodium	2012	0%	12%
High Pressure Sodium	2013	3%	15%
High Pressure Sodium	2014	0%	15%
High Pressure Sodium	2015	0%	15%
Decorative High ⁴ Pressure Sodium	2011	12%	12%
Decorative High Pressure Sodium	2012	2%	14%
Decorative High Pressure Sodium	2013	2%	16%
Decorative High Pressure Sodium	2014	2%	18%
Decorative High Pressure Sodium	2015	2%	20%
Metal or Decorative Poles ^{1&5}	2011	30%	30%
Metal or Decorative Poles	2012	(2%)	28%
Metal or Decorative Poles	2013	0%	28%
Metal or Decorative Poles	2014	(2%)	26%
Metal or Decorative Poles	2015	(1%)	25%

¹ The new rates for Mercury, High Pressure Sodium lights, and monthly pole charges referenced apply to the Joint Municipalities including Englewood, Bellbrook, and Beavercreek and shall be effective beginning January 1, 2011.

² The percentage discount listed is applied against the 3% discount rate negotiated with most of the Joint Municipalities as set forth in paragraph 2 of the Street Lighting Agreement effective for calendar years 2007-2010.

³ High Pressure Sodium Fixtures: 5800 HPS CO, 5800 HPS DG, 9500 HPS CO, 9500 HPS DG, 9500 HPS OB, 16000 HPS CO, 16000 HPS DG, 27000 HPS CO, 27000 HPS DG, 50000 HPS CO, 50000 HPS DG

⁴ Decorative High Pressure Sodium: 5800 HPS Providence, 5800 HPS Traditional, 5800 HPS Acorn, 9500 HPS Traditional, 9500 HPS Acorn, 9500 HPS Acorn Metered, 9500 HPS Gas Light, 16000 HPS Heritage/Manchester, 16000 HPS Tear Drop, 16000 HPS Regal, 16000 HPS Vimont, 27000 HPS Sterner, 50000 HPS Sterner, 4000 Lumens Incandescent, 41500 Metal Halide Shoebox, 50000 HPS Flood

⁵ There is no monthly charge for wood poles. These monthly charges for metal or decorative poles also applies to new poles installed on or after January 1, 2011.