

CITY OF KIRTLAND

RESOLUTION NUMBER 20-R-42

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CLEVELAND ILLUMINATING COMPANY FOR LED STREET LIGHTING, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kirtland has identified the need for more efficient, cost effective lighting on its City streets; and

WHEREAS, the Cleveland Illuminating Company owns and operates the streetlights within the City of Kirtland; and

WHEREAS, the Cleveland Illuminating Company is offering a program to replace older streetlights with LED bulbs;

WHEREAS, due to the current state of emergency in Ohio and the governor's current stay at home order stemming from the COVID-19 pandemic, the Kirtland Community Center has been closed to protect both the community and the staff from potential infection; and

WHEREAS, Kirtland Codified Ordinance 220.25 requires the posting of copies of enacted legislation for fifteen consecutive days in three places within the City, those being City Hall, the Kirtland Public Library, and the Kirtland Community Center; and

WHEREAS, Kirtland Codified Ordinance 220.25 grants City Council the authority to modify the posting requirement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kirtland, County of Lake and State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into the LED Street Lighting Agreement with the Cleveland Illuminating Company and is specifically authorized to choose Option 3 pursuant to the terms of that agreement. Said agreement is attached hereto as Exhibit A and specifically made a part hereof.

SECTION 2: The City Council, pursuant to its authority in Kirtland Codified Ordinance, Section 220.25 and due to the COVID-19 pandemic, hereby modifies the requirement to post this enacted legislation in three places and requires the following:

1. The Clerk of Council is hereby directed to post the enacted legislation in City Hall and the Kirtland Public Library for fifteen (15) consecutive days after the effective date of this legislation; and
2. Due to the closure of the Kirtland Community Center, the Clerk of Council is not required to post said enacted legislation in that location; and
3. The Clerk of Council is hereby directed to post the enacted legislation on the City of Kirtland's website for fifteen (15) consecutive days after the effective date of this legislation.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that it is necessary to provide for the needs of the municipality and ensure the safety of its citizens by providing properly lit streets; wherefor, this Resolution shall be in full force and effect immediately upon its passage by the affirmative vote of five (5) members of Council and approval by the Mayor, otherwise this Resolution shall be in effect from and after its adoption at the earliest period allowed by law.

First Reading: _____
Second Reading: _____
Third Reading: _____

DATE PASSED: _____

President of Council

Submitted to the Mayor for his
Approval on this _____ day of
_____, 2020.

ATTEST:

Approved by the Mayor on this _____
day of _____, 2020.

Clerk of Council
LED Street Lighting Agreement

Mayor Kevin F. Potter

LED STREET LIGHTING AGREEMENT
FORM NO. (REV. FEB-2020)

THIS AGREEMENT, made and entered into this the _____ day of _____, 20___, by and between _____ hereinafter called "Customer", and The Cleveland Illuminating Company, a public utility corporation organized and existing under the laws of the State of Ohio, hereinafter called the "Company".

WITNESSETH:

WHEREAS, The Public Utilities Commission of Ohio ("PUCO") has approved the Company's "Experimental Company Owned LED Lighting Program" tariff in Case No. 19-1108-EL-ATA; and

WHEREAS, Customer desires the Company to provide light-emitting diode ("LED") street lighting service to the Company owned street lighting facilities ("Units"), situated in the _____ of _____, County(ies) of _____ State of Ohio; and

WHEREAS, Customer may from time to time desire the Company to modify, add, replace and/or remove the Company owned Units; and

WHEREAS, Customer desires the Company to provide LED street lighting service to any existing, additional or replaced Units;

NOW, THEREFORE, Customer and the Company, in consideration of the mutual promises set forth herein and intending to be legally bound, hereby agree as follows:

1. **AGREEMENT TERM** – This Agreement shall be in effect while the Tariff (defined below), as may be extended, amended, or superseded by the PUCO, is in effect. Customer participation under this Agreement is conditioned upon continued compliance with all terms and conditions of the Tariff. Customer may seek to cancel this Agreement, consistent with the terms and conditions of the Tariff, including but not limited to, Customer responsibilities for any remaining costs associated with participation under this Agreement.
2. **OPTIONS AND PRICING** – Based upon the Option(s) and accompanying schedule(s) selected below, Customer shall receive and pay for LED street lighting service provided hereunder in accordance with the Company's "Experimental Company Owned LED Lighting Program" tariff and all applicable rules, regulations, rate schedules and riders presently in effect and on file with the PUCO and as the same may, from time to time, be amended ("Tariff"). The Company shall provide LED street lighting service hereunder in accordance with the Tariff. When the Customer makes a request to install LED streetlight(s) the Company will provide a document detailing the work requested and any costs to the Customer. An authorized representative from the Customer must sign the document and make payment, if required, prior to the work being completed by the Company. The parties' acceptance of the terms

Customer: _____

and conditions of this Agreement and the parties' signatures are required prior to commencement of any work being performed hereunder.

Option 1: Customer requests replacement of existing non-LED lights with LED lights, or installation of new LED lights. In cases where an existing light is being replaced by an LED light on existing Company owned infrastructure, the Customer agrees to pay for the remaining costs of the existing lighting infrastructure prior to installation of the LED light. For each existing light that is being replaced, the remaining costs of the existing infrastructure are to be paid by the Customer, in the amount per fixture as set forth in the Tariff, prior to the Customer taking service under Option 1. Customer's selection of Option 1 applies to the Units set forth in a schedule agreed upon between Customer and Company to be attached at a later date.

Initial (Company) _____ Date _____
Initial (Customer) _____ Date _____

Option 2: Customer requests replacement of existing non-LED lights with LED lights. Prior to taking service under Option 2, the Customer agrees to pay the Company for the remaining costs of the existing lighting infrastructure over a 60-month period in the monthly amount per fixture as set forth in the Tariff. Upon Company's acceptance of final payment at the expiration of the 60-month period, the Customer will no longer be responsible for the remaining costs of the existing lighting infrastructure. In the event of termination of service for any reason prior to expiration of the 60-month period, the Customer, prior to termination of service, shall pay the Company the amount due under the Agreement for the remaining costs of the existing lighting infrastructure and all costs associated with removing the LED lights. Customer's selection of Option 2 applies to the Units set forth in a schedule agreed upon between Customer and Company to be attached at a later date.

Initial (Company) _____ Date _____
Initial (Customer) _____ Date _____

Option 3: Customer requests replacement of existing non-LED lights with LED lights as the non-LED lights fail, which is determined by the Company. Customer's selection of Option 3 applies to the Units set forth in a schedule agreed upon between Customer and Company to be attached at a later date.

Initial (Company) _____ Date _____
Initial (Customer) _____ Date _____

- LOCATION OF UNITS** – The location of existing Units shall be identified in the Company's computerized database. Any addition, replacement and/or removal of Units shall be noted in such database by the Company. It is the Customer's responsibility to make a request for new LED streetlight installation locations based on locations where they are permitted to do so.

Customer: _____

4. **SELECTION OF UNITS** – The Customer and Company agree that lighting design and light selection authority is the Customer's. The Company will collaborate with the Customer upon request, but sole authority lies with the Customer.
5. **ADDITION, REPLACEMENT AND/OR REMOVAL OF UNITS** – At the request of Customer and in accordance with the Tariff, the Company will add, replace and/or remove Units.
6. **OWNERSHIP, MAINTENANCE AND REPLACEMENT** – None of the facilities or equipment installed or to be installed by the Company in connection with the supply of the LED street lighting service by the Company shall be deemed to be or become a part of the real estate crossed by or abutting such facilities or equipment or to be subject to any mortgage, lien or encumbrance applicable to such real estate; but shall, at all times, remain the personal property of the Company. All lighting components including lamp, refractor, luminaire, ballast, pole, bracket and other supporting materials shall be owned by the Company. If the Customer decides to opt out of the "Experimental Company Owned LED Lighting Program", Customer's decision shall not affect or impair the Company's ownership rights of the LED lights. All service and necessary maintenance will be performed only during the regular work hours of the Company. If service and necessary maintenance cannot be performed during regular work hours of the Company, for reasons beyond the Company's control, the incremental costs of performing such work shall be borne by the Customer. Costs associated with activities related to replacement, relocation, alteration, repair or removal of existing street lighting equipment are not included as part of normal maintenance and are the Customer's responsibility. Examples of such activities include, but are not limited to, the replacement of the existing fixture, remaining costs of existing infrastructure, removal or relocation of a lamp, luminaire, bracket, and/or pole, or installation of a luminaire shield.
7. **GENERAL PROVISIONS** – Reference is made to the Tariff for all other terms, provisions and conditions relative to the supply of LED street lighting service, including certain restrictions and limitations. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. This Agreement and the Tariff shall constitute the entire agreement among the parties hereto and supersedes any and all prior written or oral agreements, communications, negotiations, representations, or promises with respect to the subjects addressed in this Agreement. To the extent there is any conflict between this Agreement and the Tariff, the Tariff shall prevail. This Agreement shall be binding upon Customer and the Company and their respective successors and assigns.

Customer: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

Title: _____

Date: _____

CUSTOMER:

By: _____

Title: _____

Date: _____

COMPANY Witness:

Title: _____

Date: _____

COMPANY:

By: _____

Title: _____

Date: _____