



Introduced: 10/17/2016
Revised:
Adopted:
Effective:

RESOLUTION NO. 2016-057

**A RESOLUTION CONSENTING TO A COMPENSATION AGREEMENT
BETWEEN THE CITY OF PATASKALA, LICKING COUNTY,
SOUTHWEST LICKING LOCAL SCHOOL DISTRICT, LICKING
HEIGHTS SCHOOL DISTRICT, AND AEP OHIO TRANSMISSION
COMPANY, INC., AND AUTHORIZING AND DIRECTING THE CITY
ADMINISTRATOR TO EXECUTE THE AGREEMENT**

WHEREAS, AEP Ohio Transmission Company, Inc. (“AEP”) intends to construct and operate a regional distribution center for electronic transmission equipment (“Project”) and enter into an Enterprise Zone Agreement with the City of Pataskala and the Licking County Commissioners; and

WHEREAS, pursuant to R.C. 5709.82, Council for the City of Pataskala, Board of Licking County Commissioners, Board of Education for the Southwest Licking Local School District, and Board of Education for the Licking Heights School District desire to enter into a Compensation Agreement to share proceeds from real and personal property tax generated by the Project; and

WHEREAS, the City of Pataskala now wants to authorize the City Administrator to execute the Compensation Agreement.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS PRESENT CONCURRING THAT:

Section 1: Council for the City of Pataskala hereby consents to a Compensation Agreement with the Board of Licking County Commissioners, Board of Education for the Southwest Licking Local School District, Board of Education for the Licking Heights School District and AEP.

Section 2: Council for the City of Pataskala hereby authorizes and directs the City Administrator to execute a Compensation Agreement, in substantially the same form and content as the Compensation Agreement attached hereto as Exhibit A and incorporated herein by reference.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision making bodies of the

City of Pataskala which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

Section 4: This Resolution shall take effect at the earliest time allowed by the Charter of the City of Pataskala.

ATTEST:

Kathy M. Hoskinson, Clerk of Council

Michael W. Compton, Mayor

APPROVED AS TO FORM:

Brian Zets, Law Director

COMPENSATION AGREEMENT

This Compensation Agreement (this "Agreement") is made and entered into effective the _____ day of October 2016 by and among the Licking Heights Local School District, a school district organized and existing pursuant to the constitution and laws of the State of Ohio through its Board of Education ("Licking Heights"); Southwest Licking Local School District, a school district organized and existing pursuant to the constitution and laws of the State of Ohio through its Board of Education ("SW Licking" and together with Licking Heights, the "School Districts"); Licking County, Ohio, a county organized and existing pursuant to the constitution and laws of the State of Ohio (the "County"); the City of Pataskala, Licking County, Ohio, a municipal corporation organized and existing pursuant to the constitution and laws of the State of Ohio (the "City"); and American Electric Power Transmission, a corporation organized under the laws of the State of _____ (the "Company").

WITNESSETH:

WHEREAS, the Company desires to construct a transmission construction center in three phases, at a total cost of approximately \$ _____ (the "Project") at a site that is located in the County, as more particularly described in the EZ Agreement defined below (the "Project Site"); and

WHEREAS, the Company is expected to create at least 15-18 new full-time, permanent job opportunities within approximately six years from the commencement of construction on the Project, with total annual new payroll of approximately \$800,000; and

WHEREAS, the Company plans to develop the Project and create new employment opportunities at the Project Site, provided that the appropriate economic development incentives are available to support the economic viability of the Project; and

WHEREAS, in connection with the Project, the Company, the County and the City have entered into, or will enter into and Ohio Enterprise Zone Agreement (the "EZ Agreement," substantially in the form attached hereto as Exhibit A and incorporated into this Agreement by this reference"), which EZ Agreement would provide the Company with a 15-year, 100 percent property tax exemption for the increase in the assessed value of real property and new public utility tangible personal property used in business at the Project Site; and

WHEREAS, the School Districts have conditionally approved the real and personal property tax exemptions offered to the Company in the EZ Agreement, subject to the execution of this Agreement; and

WHEREAS, in connection with the EZ Agreement the School Districts, the County, the City and the Company desire to enter into this Agreement to provide for the payment of compensation to the School Districts, the County and the City in consideration of the property tax revenues foregone as a result of the exemptions provided in the EZ Agreement, pursuant to R.C. 5709.82.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement and in the EZ Agreement, the Parties agree as follows:

Section 1. Annual Compensation Payments.

A. Beginning with the first year for which property associated with the Project would be taxable but for the exemptions provided in the EZ Agreement and continuing for 14 years thereafter, the Company shall make a payment in lieu of taxes that it would have paid with respect to the Project but for the exemptions provided in the EZ Agreement (the "Annual Payment"). The amount of each Annual Payment, as well as the estimated investment in real property and public utility tangible personal property are set forth on the attached Exhibit B.

B. The Parties recognize that the actual value of the investments made by the Company may vary from the estimated amounts reflected in the EZ Agreement. So long as the value of the improvements making up the Project by the Company do not exceed the estimated value reflected in the EZ Agreement by 20 percent of the estimates contained in the EZ Agreement and reflected in Exhibit B, no adjustment to the amount of the Annual Payment shall be made. For any year in which the value of the improvements and public utility tangible personal property making up the Project by the Company is greater than 120 percent of the estimated amount, then in such case the Annual Payment shall be adjusted pursuant to Section 1.C. to reflect the actual value of the property making up the Project.

C. In the event that the value of the investment made by the Company varies from the estimated amounts reflected in the EZ Agreement by more than 20 percent, it is the intention of the parties that the Annual Payment shall be an amount equal to 25 percent of the total real and public utility property taxes that would have been paid with respect to the Project but for the exemptions provided in the EZ Agreement. In such event, the following procedure shall be followed for calculating the amount of the Annual Payment for that year:

1. For purposes of computing the taxes that would have been paid but for the exemptions provided in the EZ Agreement, it is agreed by the parties that 75 percent of the total assessed value shall be treated as if it were located in the territory of Licking Heights, and 25 percent of the total assessed value shall be treated as if it were located in the territory of SW Licking.

2. For purposes of computing the Annual Payment for the year, by December 31 of the year to which the Annual Payment relates the Company shall provide to the Treasurer of Licking Heights the full and assessed value of the public utility tangible personal property reported on its annual form U-EL filed with the Ohio Department of Taxation for that year, as adjusted by the Department of Taxation if any adjustment is made. The assessed value of the real property making up the project shall be the value for that tax year reflected on the records of the Licking County Auditor. The Treasurer of Licking Heights shall, with the assistance of the Licking County Auditor, compute the amount of the Annual Payment based upon the tax rates in effect for each tax entity for that year, assuming that 75 percent of the assessed value of the property is located in the territory of Licking Heights and 25 percent of the assessed value of the property is located in the territory of SW Licking.

D. The Treasurer shall provide notice of the amount of the Annual Payment, together with such detail as the Company may reasonably request, to the Company no later than January 31 of the following year.

E. Each Annual Payment shall be made within 30 days of the date that the amount of the Annual Payment is determined and notice is given as provided in this Agreement. The Annual Payment shall be made payable to Licking Heights and shall be delivered to Treasurer, Licking Heights Local School District, 6359 Summit Road, S.W., Pataskala, OH 43062.

F. Upon receipt of the Annual Payment, Licking Heights shall cause the Annual Payment to be distributed pursuant to the schedule set forth in Exhibit C, which is attached to this Agreement and incorporated into it by this reference. In the event the amount of the Annual Payment is greater than the amount reflected on Exhibit B, the amount in excess of the amount reflected on Exhibit B shall be distributed among the County, the City and the School Districts according to the percentages reflected on line Y of Exhibit C.

F. The Parties anticipate that the first tax year for which an Annual Payment will be due from the Company (that is, the first year for which an exemption pursuant to the EZ Agreement will apply) is 2020.

Section 2. Additional School Compensation. Within 30 days after this Agreement and the EZ Agreement are signed, Company agrees to provide the following additional compensation:

(a) Payment of the sum of \$10,000 to each School District to be used to off-set fees and expenses, including legal fees, incurred in negotiating and finalizing this agreement.

(b) Reasonable support of the organized activities and programs of the School Districts.

Section 3. Information Provided. Annually, the Company shall provide to the School Districts, the County and the City, the following information and documents:

(a) such portion of the annual form U-EL filed with the Ohio Department of Taxation for that year that reflects the value of the property for which exemptions from taxation are claimed pursuant to the EZ Agreement;

(b) copies of the report filed with the Tax Incentive Review Committee;

(c) copies of such annual reports filed with the City with respect to payroll paid to new employees at the Project Site and the municipal income tax withheld and paid to the City with respect to such payroll. The Company may redact from such reports any personal identifying information; and

(d) any other information reasonably necessary to carry out the objective and obligations of this Agreement.

Section 4. Municipal Income Tax. In the event that payroll for new employees associated with the project, including construction, exceeds \$1mm in any year that this Agreement is in effect, the City and School Districts shall proceed under the provisions off R.C. 5709.82 to negotiate an agreement regarding the manner in which the municipal income tax associated with payroll associated with the new employees shall be shared. In no event with the sharing of any income tax under this section change the allocation of the Annual Payment made by the Company as provided elsewhere in this Agreement.

Section 5. Amendment. This Agreement may be amended or modified by the parties only in writing, signed b all the Parties to this Agreement.

Section 6. Entire Agreement. This Agreement is executed pursuant to R.C. 5709.82 and sets forth the entire agreement and understanding among the parties as to its subject matter. It merges and supersedes all prior discussions, agreements and undertakings of every kind and nature between the Parties with respect to the subject matter of this Agreement.

Section 7. Notices. All payments, certificates, and notices which are required to or may be given pursuant to the provisions of this Agreement shall be send by United States certified mail, postage prepaid, or via a nationally-recognized overnight mail delivery service, and shall be deemed to have been given or delivered when so mailed to the following addresses:

If to the Company, to:

If to Licking Heights to:

Treasurer
Licking Heights Local Schools
6539 Summit Road, S.W.
Pataskala, OH 43062

If to SW Licking, to

Treasurer
Southwest Licking Local Schools
927-A South Street
Pataskala, OH 43062

If to the County, to:

Board of County Commissioners
Attn: Chair
Licking County Administration Building
20 South Second Street
Newark, OH 43055

If to the City, to:

City of Pataskala
Attn: City Administrator
621 West Broad Street
Pataskala, OH 43062

Any Party may change its address for receiving notices and reports by giving written notice of such change to the other parties.

Section 8. Severability of Provisions. The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement and this Agreement shall be construed in all respect as if any invalid portions were omitted.

Section 9. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart.

Section 10. Extent of Covenants; Binding Effect; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. Each provision of the Agreement is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this Agreement. Each duty of the School Districts and its bodies, officers and employees, and of the County or City and its bodies, officers and employees, is established as a duty of the School Districts, the County and the City and of each such officer, employee or body having authority to perform that duty, specifically and enjoined by law resulting from an office, trust or station within the meaning of R.C. Section 2731.01 providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.

Section 11. Events of Default and Remedies.

A. Events of Default. An “Event of Default” shall occur under this Agreement if any party shall fail to observe and perform any agreement, term or condition contained in this Agreement, and the continuation of such failure for a period of thirty days after written notice thereof shall have been given by the other parties, or for such longer period as the other parties may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as one of the parties institutes curative action within the applicable period and diligently pursues that action to completion.

In addition, if the Company defaults under this Agreement, that Event of Default also shall be deemed to be a material failure to comply with the terms of the EZ Agreement, which could result in the termination of the EZ Agreement pursuant to Section __ of the EZ Agreement.

B. Remedies on Default. Whenever any Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

- (1) The non-defaulting parties may take any action available under law or in equity to enforce this Agreement, including, without limitation, mandatory injunction or specific performance; or
- (2) A non-defaulting party may terminate this Agreement.

C. **No Waiver.** Waiver by a party of any Event of Default shall not be deemed to extend to any subsequent or other Event of Default under this Agreement. No failure by a party to insist upon the strict performance by the other party shall constitute a waiver of the party's right to strict performance; and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the other party to observe or comply with any provision hereof.

Section 12. Governing Law; Venue. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio. Any claims brought to enforce any of the covenants, agreements, conditions and provisions of this Agreement shall be brought in the Court of Common Pleas of Licking County, Ohio.

Section 13. Local Preference. The Company agrees that in connection with the construction of the Project, it shall, to the extent practicable and cost-effective, make a good faith effort to attract and use Ohio labor and materials.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company, the School Districts, the City and the County have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

AEP TRANSMISSION

By: _____

Its: _____

LICKING HEIGHTS LOCAL SCHOOL DISTRICT

By: _____
Superintendent

By: _____
Treasurer

SOUTHWEST LICKING LOCAL SCHOOL DISTRICT

By: _____
Superintendent

By: _____
Treasurer

CITY OF PATASKALA, LICKING COUNTY, OHIO

By: _____
City Administrator

By: _____
Finance Director

BOARD OF COUNTY COMMISSIONERS, LICKING COUNTY, OHIO

By: _____

By: _____

By: _____

APPROVED AS TO FORM:

Prosecuting Attorney