

ORDINANCE NO.:
SPONSOR:
INTRODUCED:

2018-05
MAYOR NEUGEBAUER
MARCH 27, 2018

INTERGOV. & UTIL.

ASSIGNED TO: _____

AN ORDINANCE AUTHORIZING ALL ACTIONS NECESSARY TO SUPPORT THE CONTINUATION OF A GOVERNMENTAL ELECTRICITY AGGREGATION PROGRAM WITH OPT-OUT PROVISIONS PURSUANT TO SECTION 4928.20 OF THE OHIO REVISED CODE, WITH FIRSTENERGY SOLUTIONS CORP. FOR THE PURPOSE OF CONTINUING THE EXISTING ELECTRICITY AGGREGATION PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, FirstEnergy Solutions Corp. ("FES") and the City of Green ("City") are parties to a certain Master Agreement to Provide Services to an Aggregated Group dated August 18, 2003, as amended by the First Amendment dated August 2, 2007, Second Amendment dated November 20, 2008, Third Amendment dated April 29, 2009, and Fourth Amendment dated November 3, 2009 (collectively, the "Agreement"); and

WHEREAS, FES and City mutually agree to renew the Agreement for the term beginning with May 2018 meter read dates through May 2021 meter read dates ("Renewal Term").

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

SECTION ONE:

City Council authorizes the Mayor to enter into the Fifth Amendment to the Master Service Agreement ("MSA") with FirstEnergy Solutions Corp., a copy of which is attached hereto and incorporated herein as Exhibit "A", for the purpose of continuing the existing electricity aggregation program.

SECTION TWO:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meeting of this Council and any deliberations of this City and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION THREE:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green and for the further reason that the electricity aggregation program continues to provide service and so that the Agreement may be effective as soon as possible but no than May 1, 2018. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: April 10, 2018

Molly Kapeluck
Molly Kapeluck, Clerk

Chris Humphrey
Chris Humphrey, Council President

APPROVED: April 10, 2018

Gerard M. Neugebauer
Gerard M. Neugebauer, Mayor

COPIED
MAY SVCE FIRE PARK LAW PLAN ENG
ZONE HR

ENACTED EFFECTIVE: April 10, 2018

ON ROLL CALL: Babbitt - Aye Dyer Aye Humphrey Aye Shaughnessy Aye
Speight Aye Yeargin Aye Young Aye Adopted 7-0

Suburbanite publication on April 13 and 20, 2018

Molly Kapeluck
Molly Kapeluck, Clerk

03/20/2018 Approved as to form and content by Diane A. Calta, Director of Law Diane A. Calta
3.20.18

**FIFTH AMENDMENT
TO THE MASTER AGREEMENT TO PROVIDE
SERVICES TO AN AGGREGATED GROUP
BETWEEN CITY OF GREEN, SUMMIT COUNTY, OHIO
AND
FIRSTENERGY SOLUTIONS CORP.**

This Fifth Amendment ("Amendment") is entered into this _____ day of February, 2018 ("Effective Date"), by and between City of Green, Summit County, Ohio ("City" or "Governmental Aggregator"), an Ohio municipality, and FirstEnergy Solutions Corp. ("FES"), an Ohio corporation with its principal place of business at 341 White Pond Drive, Akron, Ohio (collectively, the "Parties").

RECITALS

WHEREAS, FES and City are parties to a certain Master Agreement to Provide Services to an Aggregated Group dated August 18, 2003, as amended by the First Amendment dated August 2, 2007, Second Amendment dated November 20, 2008, Third Amendment dated April 29, 2009 and Fourth Amendment dated November 3, 2009 (collectively, the "Agreement");

WHEREAS, the Parties mutually agree to renew the Agreement for the term beginning with May 2018 meter read dates through May 2021 meter read dates ("Renewal Term");

WHEREAS, the Parties mutually agree to amend the Agreement by replacing paragraph 4.2 Additional Costs in its entirety describing the pass through of additional costs imposed by an ISO or a RTO on FES that are not otherwise reimbursed by the EDU to FES or included in the EDU's Price to Compare.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. During the Renewal Term, Participating Customers shall be billed in accordance with the Pricing provisions contained in the Renewal Term's **Fifth Amendment Attachment A to Master Agreement Between City of Green, Summit County, Ohio and FirstEnergy Solutions Corp. February 2018** attached ("Attachment A").
2. The Parties agree to amend the Agreement by replacing paragraph 4.2 Additional Costs in its entirety, as follows:
 - 4.2 Additional Costs. In the event that (1) the PUCO approves or implements a phase-in credit for generation and/or transmission charges of the Electric Distribution Utility ("EDU") or takes any other action which affects the Price to Compare ("PTC") or otherwise does not allow the EDU to reflect the full cost to procure generation and transmission in the PTC or other regulatory action; or (2) there is any change in any statute, rule, regulation, order, law, or tariff promulgated by any court, governmental authority, utility, Independent System Operator ("ISO"), Regional Transmission Organization ("RTO") or other service provider, or any change in operating procedure, which alters to the detriment of FES its costs to perform

under this Agreement, Participating Customers may receive a notification from FES. This notification will include a description of one or more of the situations described above. FES may offer Participating Customers new Terms and Conditions. Participating Customers must indicate affirmative consent to the new Terms and Conditions as specified in the notices. If Participating Customers do not contact FES to accept the new terms, the Participating Customer(s) individual terms and conditions with FES will terminate on the date specified in the notices, and Participating Customer(s) may be returned to the EDU for Retail Electric Service. Alternatively, FES may decide to terminate this Agreement, and Participating Customers will receive at least 30 days' prior written notice of the termination, after which Participating Customers may be returned to the EDU for Retail Electric Service. Whether FES offers Participating Customers new terms or terminates this Agreement under this provision, Participating Customers will not be responsible for the cancellation/termination fee (if any) set forth in the Pricing Attachment. Participating Customers must still pay all FES charges through the date they are returned to their EDU or switched to another CRES provider for service.

3. FES shall provide a financial guaranty of obligation for the City by depositing the amount of \$72,898 ("Deposit") in a separate bank account under the supervision of the City Treasurer's office. The City and FES agree that the City Treasurer's office shall be the trustee of this account ("Trustee"). The Trustee agrees to hold the Deposit as a financial guaranty of obligation by FES for the members participating in the City's electric governmental aggregation program and that the Deposit shall remain as a separate account at all times during this Renewal Term and may not be spent, combined, pledged, obligated or used as collateral by the Trustee for any reason unless there is an event of Default by FES under Article 6 Default and Remedies of the Agreement wherein such Default event requires the City members to purchase replacement electricity from the EDU.

In the event of Default by FES, the Trustee is authorized by FES and the City to distribute the Deposit to the City to utilize as they see fit and in accordance with applicable law.

The Deposit shall be held in trust for the City for the sole and exclusive remedy in the event of Default by FES under Article 6 wherein such Default event requires the City to purchase replacement electricity from the EDU. For avoidance of doubt, the cost to purchase replacement electricity is the sole remedy in the event of FES' Default.

In the event of no Default by FES during the Renewal Term, a portion of the Deposit shall be returned by Trustee to FES during the last six (6) months of the Renewal Term in accordance with the following return schedule:

First Business Day of Month of Remaining Month 6	\$10,414
First Business Day of Month of Remaining Month 5	\$10,414
First Business Day of Month of Remaining Month 4	\$10,414
First Business Day of Month of Remaining Month 3	\$10,414

First Business Day of Month of Remaining Month 2	\$10,414
First Business Day of Month of Remaining Month 1	\$10,414
Last Business Day of Month of Remaining Month of Term	<u>\$10,414</u>
TOTAL	\$72,898

4. All other provisions of the original Agreement shall remain unchanged.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed as of the Effective Date.

FIRSTENERGY SOLUTIONS CORP.
FirstEnergy Solutions Corp.:

CITY OF GREEN, OHIO

Signed: _____
Printed: _____
Title: _____
Date: _____

Signed: _____
Printed: _____
Title: _____
Date: _____

**Fifth Amendment Attachment A to Master Agreement
Between
City of Green, Summit County, Ohio
and FirstEnergy Solutions Corp.
February 2018**

Pricing and Other Conditions to Retail Generation Service Offer

Renewal Term:

Beginning with May 2018 meter read dates through May 2021 meter read dates.

Renewal Pricing:

Residential:

6% off the Price to Compare

Commercial:

4% off the Price to Compare

EDU:

Ohio Edison

Eligible Rate Codes:

Standard Residential Rate (RS)

General Service Commercial Rate (GS)

National accounts (e.g. McDonald's, BP, Dollar General) as well as any eligible commercial accounts with annual usage over 700,000 must "opt-in" to the program.

Termination Fee:

None

Administrative Fee:

FES shall pay to the City's Consultant, Strategic Aggregation Consultants, LLC, \$0.0004 per kWh delivered/consumed and paid for by Members under the Aggregation Program on a monthly basis. In addition to Members' consumption, this fee shall also apply to kWh delivered/consumed and paid for by any new Member or Members' accounts that join the Aggregation Program.

Civic Grant:

FES shall pay a grant to the City in the amount of \$0.0002 per annual kwh delivered/consumed by Members under the Aggregation Program at the end of each year of the above Term as follows:

Aggregation Program Annual kwh	Grant Payable
May 2018 – May 2019 meter read dates	August 2019
May 2019 – May 2020 meter read dates	August 2020
May 2020 – May 2021 meter read dates	August 2021

Administrative Services:

- Design, print and mail the Opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance.
- Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide a call center to handle information calls.
- Prepare the required PUCO reports and on-going certification documents.
- Conduct supplemental opt-out mailings on a periodic basis.