

RESOLUTION NO. 2009-400

SPONSOR Mr. Pry and Mrs. Shapiro

DATE November 2, 2009

COMMITTEE Planning

A Resolution authorizing the County Executive to execute, subject to the approval of the Board of Control, the Fourth Amendment to the Master Services Agreement with FirstEnergy Solutions, Corp., to supply electricity for the County's opt-out electricity aggregation program to extend the Master Agreement for an additional six years, from its current termination date of 5/30/12 until 5/31/18, with a 6% discount for residential customers and a 4% discount for commercial customers and a one-time "Powering Our Communities" grant, in the amount of \$1,129,072.00, to be paid by the County of Summit to communities participating in the County's electricity aggregation program, and appropriating grant funds, for the Executive, and declaring an emergency.

WHEREAS, at the 5/2/02 Primary Election, voters in the townships of Bath, Boston, Copley, Coventry, Franklin, Northfield, Richfield, Sagamore Hills, Springfield, Twinsburg and the Village of New Franklin authorized the County of Summit on their behalf to create a governmental aggregation program for electricity; and

WHEREAS, after a Request for Proposals process, County Council subsequently approved Resolution No. 2002-523, which confirmed the award by the Board of Control to FirstEnergy Solutions, Corp. to implement the County's opt-out electricity aggregation program on behalf of all of the aforementioned communities; and

WHEREAS, on 8/28/02, the County Executive executed a four-year contract with FirstEnergy Solutions, the Master Agreement to Provide Services to an Aggregation Group ("Master Agreement"); and

WHEREAS, at the 11/4/03 General Election, the voters of both Franklin Township and New Franklin Village approved a merger of the two communities effective 1/1/05; and

WHEREAS, on 3/5/06, the new combined community, called New Franklin Village, officially became the City of New Franklin; and

WHEREAS, in 2006, after a Request for Proposals process, to which only FirstEnergy Solutions responded, Council approved Resolution No. 2006-642, which confirmed the award by the Board of Control of an extension of the Master Agreement for an additional 30 months, until 12/31/08, and the Executive executed the extension as the First Amendment; and

WHEREAS, following notice by FirstEnergy Solutions that it could no longer provide electricity to the County's electricity aggregation program at a lower cost than the individual consumer, Council approved Resolution No. 2008-489, which confirmed the award by the Board of Control of the Second Amendment to the Master Agreement with FirstEnergy Solutions to supply electricity for the County's of Summit's opt-out electricity aggregation program to: (1) suspend the provisions of the contract regarding energy and energy-related services; (2) provide aggregation development and administrative services to maintain the County's status as a governmental aggregator for electricity at no cost to the County; (3) provide a right of first refusal to FirstEnergy, Corp. to match an offer to the County by a certified electricity supplier if the County restarts the electricity aggregation program; and (4) extending the contract for an

additional one-year term, from 1/1/09 through 12/31/09, with four options to renew for an additional one year term; and

WHEREAS, the Executive executed the Second Amendment on 1/16/09; and

WHEREAS, FirstEnergy Solutions subsequently proposed a contract with the County to supply electricity to the County's opt-out electricity aggregation program for the period of 7/1/09 through 5/30/12, with one optional plan being a plan with a 6% discount for residential customers and a 4% discount for commercial customers; and

WHEREAS, this Council subsequently adopted Resolution No. 2009-178, which approved the aforementioned contract, subject to the approval of the Board of Control, which also approved the contract, which the Executive executed as the Third Amendment dated 9/28/09; and

WHEREAS, FirstEnergy Solutions has proposed the following in a Fourth Amendment to the Master Agreement:

- (1) A six-year extension of the Master Agreement from its current termination date of 5/30/12 through 5/31/18, with a 6% discount for residential customers and a 4% discount for commercial customers; and
- (2) A one-time "Powering Our Communities" grant in the amount of \$1,129,072.00 to be paid by the County of Summit to the communities participating in the County's opt-out electricity aggregation program as follows:

Boston Township -	\$50,000.00
Richfield Township -	\$50,000.00
Twinsburg Township -	\$50,000.00
Northfield Center Township -	\$75,000.00
Sagamore Hills Township -	\$114,578.00
Bath Township -	\$118,197.00
Coventry Township -	\$133,715.00
Copley Township -	\$167,340.00
Springfield Township -	\$186,072.00
City of New Franklin -	\$184,171.00
TOTAL-	\$1,129,072.00

WHEREAS, the County wishes to accept FirstEnergy Solution's offer and execute the Fourth Amendment; and

WHEREAS, upon the execution of the Fourth Amendment, it is necessary to appropriate grant funds;

WHEREAS, Section 177.07(a)(11) of the Codified Ordinances of the County of Summit exempts contracts for utility aggregation services from competitive bidding; and

WHEREAS, this Council has determined by reviewing all pertinent information that it is necessary and in the best interest of the County of Summit to authorize the County Executive to

execute, subject to the approval of the Board of Control, the Fourth Amendment to extend the Master Agreement for an additional six years, until 5/31/18, with a 6% discount for residential customers and a 4% discount for commercial customers and a one-time "Powering Our Communities" grant, in the amount of \$1,129,072.00, to be paid by the County to communities participating in the County's opt-out electricity aggregation program and to appropriate grant funds;

NOW, THEREFORE, BE IT RESOLVED by the Council of the County of Summit, State of Ohio, that:

SECTION 1

The County Executive is hereby authorized to execute, subject to the approval of the Board of Control, the Fourth Amendment to the Master Services Agreement, attached hereto as Exhibit A and incorporated herein as if fully restated, with FirstEnergy Solutions, Corp., to supply electricity for the County's opt-out electricity aggregation program to extend the Master Agreement for an additional six years, from its current termination date of 5/30/12 until 5/31/18, with a 6% discount for residential customers and a 4% discount for commercial customers and a one-time "Powering Our Communities" grant, in the amount of \$1,129,072.00, to be paid by the County of Summit to communities participating in the County's electricity aggregation program. The Fourth Amendment is approved with changes therein not inconsistent with this Resolution and not substantially adverse to the County which shall be approved by the County Executive; provided that the approval of those changes by the County Executive and the character of such changes as not being substantially adverse to the County shall be evidenced conclusively by the execution of the Fourth Amendment.

SECTION 2

"Powering Our Communities" grant funds are hereby appropriated as follows:

<u>ACCOUNT NO.</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Grants		
23160-8016-65111	First Energy Funding	<u>\$1,129,072.00</u>
Total Appropriations Grants		\$1,129,072.00

SECTION 3

The County Fiscal Officer is hereby authorized and directed to effect the within appropriation.

SECTION 4

The payment of funds from the "Powering Our Communities" grant to communities participating in the County's opt-out electricity aggregation program is hereby authorized as follows:

Boston Township -	\$50,000.00
Richfield Township -	\$50,000.00

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SECTION 4 (cont'd.)

Twinsburg Township -	\$50,000.00
Northfield Center Township -	\$75,000.00
Sagamore Hills Township -	\$114,578.00
Bath Township -	\$118,197.00
Coventry Township -	\$133,715.00
Copley Township -	\$167,340.00
Springfield Township -	\$186,072.00
City of New Franklin -	\$184,171.00
TOTAL-	\$1,129,072.00

SECTION 5

This Resolution is hereby declared an emergency in the interest of the health, safety and welfare of the citizens of the County of Summit and for the further purpose of immediately authorizing the Executive to execute the Fourth Amendment to the Master Agreement with FirstEnergy Solutions to supply electricity to the County's opt-out electricity aggregation program.

SECTION 6

Provided this Resolution receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise, it shall take effect and be in force at the earliest time provided by law.

SECTION 7

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted 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.

INTRODUCED October 19, 2009

ADOPTED November 2, 2009

Shanley P. Greer
CLERK OF COUNCIL

Nick Kostandaras
PRESIDENT OF COUNCIL

APPROVED November 2, 2009

Russell M. Poda
EXECUTIVE

November 2, 2009
ENACTED EFFECTIVE

Voice Vote: 11-0 YES: Comunale, Crawford, Crossland, Feeman, Kostandaras, Poda, Prentice, Rodgers, Schmidt, Shapiro, Smith

**Fourth Amendment to the
Master Agreement to Provide Services
to an Aggregation Group
Between Summit County, Ohio
and
FirstEnergy Solutions Corp.**

This Fourth Amendment is entered into as of the ____ day of _____, 2009 (the "Effective Date"), by and between The County of Summit, Ohio ("County"), a county organized under a charter and the laws of Ohio, and FirstEnergy Solutions Corp. ("FES"), an Ohio corporation with its principal place of business at 341 White Pond Drive, Akron, Ohio, (the "Parties").

RECITALS

WHEREAS, FES and the County are parties to a certain Master Agreement to Provide Services to an Aggregation Group dated the 28th day of August, 2002, ("Master Agreement") as amended by the First Amendment to the Master Agreement dated the 30th day of December, 2004 and as further amended by the Second Amendment to the Master Agreement dated the 1st day of January, 2009 and as further amended by the Third Amendment to the Master Agreement dated the 28th day of September 2009;

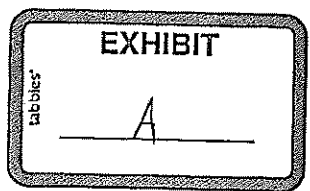
WHEREAS, the electricity market in Ohio has recently changed such that it appears that FES is able to provide long-term retail generation service pricing such that government aggregation programs have the potential to provide savings to members;

WHEREAS, FES is willing to offer to the County a one-time grant in 2009 as consideration for the County's agreement to participate in the *Powering Our Communities* program, which extends the term of the Master Agreement for the additional period of June 2012 through May 2018;

WHEREAS, in recognition of the above-mentioned circumstances, the County desires to extend the current term with FES to provide energy and energy-related services to members through Government Aggregation under the Powering Our Communities program;

WHEREAS, notwithstanding the Parties rights and obligations as contained in the Master Agreement and subsequent amendments, FES is willing to provide the energy and energy related services desired by the County contingent upon the occurrence and ongoing continuation throughout the term of the Master Agreement of certain conditions listed in the new Attachment A;

WHEREAS, the Parties acknowledge that if the occurrence and ongoing continuation throughout the term of the Master Agreement of certain conditions in the new Attachment A are not met, FES shall have the option to declare this Amendment null and void and the parties shall thereafter be subject to the terms and conditions of the Master Agreement as amended;



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. If the occurrence and ongoing continuation throughout the term of the Master Agreement of certain conditions in the new Attachment A (referenced in 2.d. below) are not met, FES shall have the option to declare this Amendment null and void and the parties shall thereafter be subject to the terms and conditions of the Master Agreement as amended.
2. The parties agree to further amend the Master Agreement as provided below:
 - a. Section 1.3 is modified to read as follows: The term of the Master Agreement as amended shall be for the term identified in the new Attachment A, subject nonetheless to the provisions of Article 2 and further subject to the provisions of the new Attachment A as referenced above.
 - b. Section 2.3 is modified to read as follows:

2.3 Regulatory Events Defined. Regulatory changes or rulings, legislative and agency acts, and judicial rulings covered by preceding paragraph 2.2, include but are not limited to: i) material changes affecting FES' and/or Governmental Aggregator's electric supplier certification/franchise status, *fees, costs*, or requirements; ii) other changes or clarifications of federal, state or local government certification, licensing or franchise requirements for electric power suppliers; iii) *changes to existing or new* charges, fees, *costs*, and/or obligations, including without limitation transmission or capacity requirements or charges, that may be imposed upon FES by a regional transmission organization, independent transmission system operator, independent transmission provider, or government agency; iv) *changes to existing or new charges, fees, costs, credits, emission allowance requirements, permitting requirements and/or obligations associated with environmental or energy law and regulations (including, without limitation, alternative energy requirements, carbon and greenhouse gas, or other similar controls)*; and v) other changes to *or requirements of* retail electric customer access or aggregation programs in a manner which will not reasonably allow a Party or the Parties to perform economically hereunder; and provided that in each such case such actions or effects were not known *and in effect* at the time of the Effective Date of this Agreement.
 - c. Notwithstanding anything in the Master Agreement to the contrary the Parties agree that FES shall control the timing and content of all press releases without the need for prior approval due to the nature of the *Powering Our Communities* program and the funding that will be provided to participating communities.

d. Existing Attachment A is deleted in its entirety and replaced with the new Attachment A as referenced in paragraph one above.

IN WITNESS WHEREOF, the Parties have duly executed this Fourth Amendment as of this ___ day of _____, 2009.

FIRSTENERGY SOLUTIONS CORP.

THE COUNTY OF SUMMIT, OHIO

By: _____

By: _____

ATTACHMENT A:

**Pricing and Other Conditions
to Retail Generation Service Offer**

Attachment A to Master Agreement

Between

The County of Summit, Ohio and FirstEnergy Solutions Corp.

The program discounts are as follows:

Term: July 2009 – May 2018

Residential Rates

Standard Residential Rate (RS)

2009 -	6% Discount*
2010 -	6% Discount*
2011 -	6% Discount*
Through May 2012 -	6% Discount*
June 2012 – May 2018	6% Discount*

Commercial Rates

General Service(GS) to 399 KWd

2009 -	4% Discount*
2010 -	4% Discount*
2011 -	4% Discount*
Through May 2012 -	4% Discount*
June 2012 – May 2018 -	4% Discount*

**Residential Water and/or Space Heating
Or Load Management Rates (RS) (Eligible for
credits under Rider EDR.)**

2009 through May 2012 -	4% Discount*
June 2012 – May 2018 -	6% Discount*

Powering Our Communities one time grant to the County in the amount of \$ 1,129,072.00.

<u>Boston Township -</u>	<u>\$50,000</u>
<u>Richfield Township -</u>	<u>\$50,000</u>
<u>Twinsburg Township -</u>	<u>\$50,000</u>
<u>Northfield Center Township -</u>	<u>\$75,000</u>
<u>Sagamore Hills Township -</u>	<u>\$114,578</u>
<u>Bath Township -</u>	<u>\$118,197</u>
<u>Coventry Township -</u>	<u>\$133,715</u>
<u>Copley Township -</u>	<u>\$167,340</u>
<u>Springfield Township -</u>	<u>\$186,072</u>
<u>City of New Franklin -</u>	<u>\$184,171</u>
<u>TOTAL -</u>	<u>\$1,129,072</u>

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

*For the term referenced above, the generation pricing under this Agreement will be calculated as the specified percentage off the Electric Utility Price to Compare ("PTC") for transmission, generation and generation related charges as set forth in the EDU's applicable tariff. However, any bypassable riders not included in the PTC will be billed at their full rate. FES reserves the right to terminate service and return members to standard offer service for the period June 2011 – May 2018 if the EDU standard service offer pricing and or tariff structure is modified. As described above, no discount will be given on such charges as transmission, ancillary services and renewable / alternative energy resources if they are identified in a separate tariff approved by the PUCO and are not included in the PTC.

Program Development/Administration – To be provided by FirstEnergy Solutions

- 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
- Preparation of required PUCO reports and on-going certification documents

The occurrence and ongoing continuation throughout the term of the Master Agreement of the following conditions must be met or FES shall have the right to declare this Amendment null and void:

1. EDU rate plan and EDU's PTC is instituted in such a manner that government aggregation programs can provide savings to members.
2. The Electric Security Plan (ESP), Market Rate Offer (MRO) and/or Competitive Bid Process (CBP), or other generation procurement process results in a PTC that is greater than or equal to the comparable annualized generation and transmission rates & riders in effect on June 1, 2009 (reflecting a monthly average rate including a seasonal adjustment).
3. Any PUCO approved phase-in credit for generation charges can be financed by FES at its discretion if commercially reasonable rates and terms are available for such financing and FES elects to do so.
4. A government aggregation program can be reasonably and practicably offered in such a manner which does not conflict with PUCO Orders or Entries or Ohio Administrative Code (OAC) rules and regulations or Ohio Revised Code (ORC) provisions related to governmental aggregation.
5. The EDU will provide percent off pricing calculation and consolidated billing consistent with previous practice.

IN WITNESS WHEREOF, the Parties have duly executed this agreement to be effective on the date first written above.

FirstEnergy Solutions Corp:

County of Summit

Signed: _____

Signed: _____

Printed
Typed Name: Arthur Yuan

Printed
Typed Name: _____

Title: V.P. Sales and Marketing

Title: _____

ATLANTA