

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2015 – 220

By: Mayor Perciak and All Members of Council

AN ORDINANCE APPROVING AND AUTHORIZING THE CITY'S PURCHASE FOR A THREE-YEAR PERIOD OF ELECTRICITY SUPPLY FOR ALL MUNICIPAL FACILITIES FROM DIRECT ENERGY BUSINESS, LLC THROUGH THE SOURCING ALLIANCE, A COUNCIL OF GOVERNMENTS; AUTHORIZING THE MAYOR TO EXECUTE A POWER SUPPLY COORDINATION SERVICE AGREEMENT AND RELATED DOCUMENTS WITH DIRECT ENERGY BUSINESS, LLC FOR THIS PURPOSE, WITHOUT PUBLIC BIDDING, AND DECLARING AN EMERGENCY.

WHEREAS, after careful review of current prices paid by the City of Strongsville for electricity for certain of its facilities, namely, the Ehrnfelt Recreation & Senior Center on Royalton Road, the Municipal Service Center offices located on Foltz Parkway, and the Police Facility located on Royalton Road, the City Administration in 2010 determined that it would be substantially more advantageous to obtain its supply of electricity for such facilities from FirstEnergy Solutions Corp. through the then Sourcing Office, a non-profit, Council of Governments which undertakes its own competitive procurement process; and

WHEREAS, to this end, the Council passed Ordinance No. 2010-075 authorizing an Affiliate Cooperative Purchasing Agreement with the Sourcing Office and the necessary agreements to implement such a purchasing program; and

WHEREAS, in 2013, through passage of Ordinance Nos. 2013-251 and 2013-252, the City authorized purchase, through the then Sourcing Office (later known as the Sourcing Alliance), of electricity for in effect all municipal facilities in the same manner, also resulting in a substantial cost savings, but with various different commencement and expiration dates of the two Agreements authorized by such respective Ordinances; and

WHEREAS, it is now estimated that proceeding again in this manner to purchase electricity for all City facilities on the same contractual basis and with identical commencement and expiration dates of service, will be more advantageous financially than the City attempting to purchase supplies of electricity on its own and will be in the best interest of the City; and

WHEREAS, the City again has the ability to opt-out these municipal facilities from its current purchase of electricity and to contract with a new supplier; and

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WHEREAS, the proposed purchases of electrical power are authorized by Ohio Revised Code Chapter 167 and Section 9.48 and without the necessity of competitive bidding.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO, BY UNANIMOUS AFFIRMATIVE VOTE:

Section 1. That consistent with Section 9.48 of the Ohio Revised Code, this Council finds and determines, as set out in Article V, § 5 of the City Charter, that it would be in the best interests of the City to purchase electricity for a three (3) year period commencing in January, 2016 through January, 2019, for all municipal facilities from **DIRECT ENERGY BUSINESS, LLC**, a public utility and supplier of electricity through the **SOURCING ALLIANCE (formerly the Sourcing Office)**, a non-profit Council of Governments, with which the City maintains an Agreement, without public bidding, for the continued and efficient operation of these municipal facilities, for the benefit of the public health, safety and welfare, and to conserve public funds.

Section 2. That for the reasons aforesaid, and pursuant to the legal authority cited above, this Council hereby approves the purchase of electricity from the above supplier for all municipal facilities during a three-year term from January, 2016 through January, 2019, and therefore, hereby approves and authorizes the Mayor to enter into a Power Supply Coordination Service Agreement with **DIRECT ENERGY BUSINESS, LLC**, substantially in the form attached hereto as Exhibit 1 and incorporated herein, but subject to final approval of the Law Director, and at prices as reflected on the Direct Energy Business, LLC fixed price pricing attachment also attached and incorporated herein by reference, but in any event in a total amount not to exceed \$800,000.00 annually during the three (3) year period of the Agreement.

Section 3. That the funds for the purpose of the aforesaid agreements and expenditures will be appropriated for the first year and shall be paid for all years of the agreements from the Multi-Purpose Complex Fund, the Street Construction, Maintenance and Repair Fund, the General Fund, Fire Levy Fund and Sanitary Sewer Fund.

Section 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, and for the further reason that it is immediately necessary to enter into said Agreement in order to continue operation of City building facilities and municipal operations without interruption, at advantageous prices for electrical power, and to

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conserve public funds. Therefore, provided this Ordinance receives the unanimous vote of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Michael Daymut
President of Council

Approved: Thomas B. Surier
Mayor

Date Passed: October 19, 2015

Date Approved: October 20, 2015

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Daymut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DeMio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dooner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maloney	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schonhut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Southworth	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Attest: Aimee Pientko
Clerk of Council

ORD. No. 2015-220 Amended: _____
1st Rdg. 10-19-15 Ref: _____
2nd Rdg. Suspended Ref: _____
3rd Rdg. Suspended Ref: _____

Pub Hrg. _____ Ref: _____
Adopted: 10-19-15 Defeated: _____



Direct Energy
Business

PowerSupply Coordination®
Service Agreement

Billing Contact Information
and Selection Form

Account / Customer Name: STRONGSVILLE, CITY OF

Your Name	BRYAN V. BOGRE
Your Phone	440-580-3262 x
Billing Information	(Exceptions: Please complete a separate form per account and list number)
Address will be applied to all accounts on Agreement	
Billing Contact Name	TINA FORD
Billing Contact Phone	440-580-3132 x
Billing Contact Fax	238-3001
Billing Contact Email	tina.ford@strongsville.org
Billing Company Name	City of Strongsville
Billing Address 1	16099 FOLTZ IND PKWY
Billing Address 2	
Billing City, State	Strongsville Ohio
Zip + 4	44149-

Please select, by initialing in the spaces provided below, those options to be applied to your billing accounts.

My accounts are Tax Exempt

Please provide current copy of a valid Tax Exemption Form when submitting this document to receive applicable tax exemption on your electricity invoices.

(Direct Energy can only apply exemptions if a completed form is provided)

Please aggregate my accounts onto one invoice (maximum 50 accounts per invoice)

(If more than 50 accounts are to be aggregated, accounts will be separated by meter read date)

Please check here if you would like to receive your contract electronically instead of in the mail.

Internal Use Only

Billing Address update required for ERM Accounts Yes No

LDC Account to be used to identify account for Scanning _____

EX.1

EXHIBIT A PRICING ATTACHMENT

This Exhibit A is to the Transaction Confirmation dated October 19, 2015 between
DIRECT ENERGY BUSINESS LLC
 and
STRONGSVILLE, CITY OF
 for the meter read(s) January, 2016 to the meter read(s) January, 2019
PJM FP_AI_UCB_100MAC_OH

Service Location	Utility	Account Number	Utility Rate Class	Purchase Price (cents/kWh)	Annual Historical Usage (kWh)
16099 FOLTZ INDUSTRIAL PKWY (CITY OF STRONGSVILLE)	Cleveland Electric	0800788249100000584	CE-GSD	5.584	747,867
18688 ROYALTON RD W (CITY OF STRONGSVILLE)	Cleveland Electric	08007882495000352068	CE-GSD	5.584	824,955
18100 ROYALTON RD (CITY OF STRONGSVILLE)	Cleveland Electric	08007882491550096652	CE-GSD	5.584	2,971,410
18088 Royalton Rd St (City of Strongsville)	Cleveland Electric	08007882491340000038	CE-STLF	5.584	1,561,485
22000 Albion Rd (City of Strongsville)	Cleveland Electric	08007882491000054666	CE-GSD	5.584	24,212
18867 Westwood Dr Temp (City of Strongsville)	Cleveland Electric	08007882491650045969	CE-GSD	5.584	3,171
17000 Prospect Rd (City of Strongsville)	Cleveland Electric	08007882495000258549	CE-GSD	5.584	281,460
13213 Pearl Rd A (City of Strongsville)	Cleveland Electric	08007882495000344909	CE-GSD	5.584	3,063
13213 Pearl Rd B (City of Strongsville)	Cleveland Electric	08007882495000344921	CE-GSD	5.584	4,694
11800 Pearl Rd Sign (City of Strongsville)	Cleveland Electric	08013787665000376819	CE-GSD	5.584	828
13777 Pearl Rd Hol (City of Strongsville)	Cleveland Electric	08007882495000336112	CE-GSD	5.584	1,928
18825 Royalton Rd W (City of Strongsville)	Cleveland Electric	08013028691530022022	CE-GSD	5.584	37,669
16533 Royalton Rd Sign (City of Strongsville)	Cleveland Electric	08007882495000306999	CE-GSD	5.584	2,091
22356 Royalton Rd Sign (City of Strongsville)	Cleveland Electric	08007882495000312422	CE-GSD	5.584	486
14625 Whitney Rd (City of Strongsville)	Cleveland Electric	08007882495000266607	CE-GSD	5.584	1,642
Pearl Rd (Strgyle Cemetary)	Cleveland Electric	08012883161460073672	CE-GSD	5.584	21,639
18100 Royalton Rd (City of Strongsville)	Cleveland Electric	08007882495000256615	CE-GSD	5.584	20,610
21255 Lunn Rd Barn (City of Strongsville)	Cleveland Electric	08007882491190098187	CE-GSD	5.584	1,970
19513 Lunn Rd (City of Strongsville)	Cleveland Electric	08007882495000342689	CE-GSD	5.584	120
11297 Webster Rd (Strongsville Fire Sta 1)	Cleveland Electric	08012836331800100843	CE-GSD	5.584	113,569
Westwood Dr (City of Strongsville)	Cleveland Electric	08007882491090091718	CE-GSD	5.584	20,928
13213 Pearl Rd	Cleveland	08007882491340000588	CE-GSD	5.584	522,962

(City of Strongsville) 18780 Westwood Dr Srvc Pnl	Electric Cleveland	08007882495000328338	CE-GSD	5.584	958
(City of Strongsville) 8630 Prospect Rd	Electric Cleveland	08007882495000301677	CE-GSD	5.584	740
(City of Strongsville) Westwood Dr	Electric Cleveland	08007882491080091715	CE-GSD	5.584	5,060
(City of Strongsville) 22707 W Sprague Rd	Electric Cleveland	08005879861160097238	CE-GSD	5.584	5,784
(City of Strongsville) 14460 Drake Rd	Electric Cleveland	08007882495000266966	CE-GSD	5.584	2,534
(City of Strongsville) Royalton Rd Clock	Electric Cleveland	08007882491180093497	CE-GSD	5.584	12,367
(City of Strongsville) 16109 Foltz Industrial Pkwy	Electric Cleveland	08005879861290094615	CE-GSD	5.584	17,542
(City of Strongsville) 15598 W Royalton Rd Sign	Electric Cleveland	08007882495000298263	CE-GSD	5.584	864
(City of Strongsville) 20428 Westwood Dr Sign	Electric Cleveland	08013787665000376820	CE-GSD	5.584	2,443
(City of Strongsville) State Rte 42 Sign	Electric Cleveland	08007882494000004904	CE-GSD	5.584	6,493
(City of Strongsville) 21273 Drake Rd	Electric Cleveland	08007882495000207387	CE-GSD	5.584	3,764
(City of Strongsville) 15715 Royalton Rd Salt Bin	Electric Cleveland	08007882495000334471	CE-GSD	5.584	2,622
(City of Strongsville) W Lunn Dr	Electric Cleveland	08007882491970095026	CE-GSD	5.584	8,453
(City of Strongsville) 14181 Foltz Industrial Pkwy	Electric Cleveland	08007882495000266965	CE-GSD	5.584	1,809
(City of Strongsville) Pearl Rd	Electric Cleveland	08014137821420098593	CE-GSD	5.584	7,780
(City of Strongsville) 21410 Lunn Rd	Electric Cleveland	08007882494000017116	CE-GSD	5.584	40,484
(City of Strongsville) Settlers Run	Electric Cleveland	08005879865000050262	CE-GSD	5.584	31,713
(City of Strongsville) 18867 Westwood Dr Temp	Electric Cleveland	08007882491650041757	CE-GSD	5.584	1,995
(City of Strongsville) Whitney Rd Bridge	Electric Cleveland	08007882491700097814	CE-GSD	5.584	3,568
(City of Strongsville) 21255 Lunn Rd	Electric Cleveland	08007882495000343316	CE-GSD	5.584	34,728
(City of Strongsville) 18688 Royalton Rd Commons	Electric Cleveland	08007882495000176662	CE-GSD	5.584	6,775
(City of Strongsville) 15939 Drake Rd	Electric Cleveland	08007882491000095931	CE-GSD	5.584	67,648
(City of Strongsville) Pearl Rd Sign	Electric Cleveland	08013850834000023850	CE-GSD	5.584	132
(City of Strongsville)	Electric				


This Exhibit is based on a Weighted Average Price. Any strikeouts of any of the accounts provided with a Weighted Average Price will render pricing for the accounts assigned with a Weighted Average Price null and void.

Accepted and Agreed to:

CITY OF STRONGSVILLE

By: 
Thomas P. Perciak, Mayor

Date: Oct. 20, 2015

Date: October 19, 2015	Product Code: PJM FP_AI_UCB_100MAC_OH
	DIRECT ENERGY BUSINESS, LLC 1001 Liberty Avenue Pittsburgh, PA 15222 Phone: 1-888-926-9115 www.directenergy.com

CUSTOMER INFORMATION

Customer Name: STRONGSVILLE, CITY OF	Billing Contact:
Contact Name: Bryan Bogre	Billing Address:
Address: 18100 ROYALTON RD, STRONGSVILLE, OH 441369500	Telephone:
Telephone: (440) 580-3262	Fax:
Fax: 440-572-3503	Email: bryan.bogre@strongsville.org

ELECTRICITY TRANSACTION CONFIRMATION - OHIO FIXED AI 100% MAC UCB

This Transaction Confirmation confirms the terms of the Electricity Transaction entered into between Direct Energy Business, LLC ("Seller"), and the customer above ("Buyer" or "Customer") pursuant to the terms of the Commodity Master Agreement between Customer and Seller and/or Seller's affiliate Direct Energy Business Marketing, LLC, d/b/a Direct Energy Business dated October 20 2015, as may be amended. If the referenced Commodity Master Agreement is between Customer and Direct Energy Business Marketing, LLC, d/b/a Direct Energy Business, Customer and Seller agree that this Transaction Confirmation shall be governed by and incorporate the terms of such Commodity Master Agreement. The Exhibit A for the Purchase Price described below is attached to, and is made a part of, this Transaction Confirmation.

The Purchase Price excludes Utility distribution charges and Taxes that are or may be the responsibility of Customer. Customer's execution and submission of this Transaction Confirmation, including Exhibit A hereto, to Seller shall constitute an offer to Customer to Seller to purchase the Commodity on the terms set forth in the Commodity Master Agreement. This Transaction Confirmation shall become effective only upon (i) execution by Customer of this Transaction Confirmation, including Exhibit A, and Commodity Master Agreement; and (ii) the earlier of execution of the Commodity Master Agreement and this Transaction Confirmation by Seller or written confirmation by Seller of its acceptance of the Transaction Confirmation to Customer.

Delivery Period:	Term (# of months): <u>36 Months</u> Service start date: <u>January, 2016</u> The service start date hereunder will be the date that the Utility enrolls Customer for Seller's service. Seller will request the Utility to enroll Customer on the first meter read date within the Delivery Period. Seller shall not be liable for any lost savings or lost opportunity as a result of a delay in service commencement due to actions or inactions of the Utility. Upon the expiration of the Delivery Period, this Transaction shall continue for successive one month terms (collectively the "Renewal Term") until either Party notifies the other Party in writing of its intention to terminate, at least 15 days prior to the end of the Delivery Period or 15 days prior to the end of each successive month Renewal Term. The termination date shall be the next effective drop date permitted by the Utility. All terms of the Agreement will remain in effect through the termination date as set by the applicable Utility. During the Renewal Term, the Purchase Price for each successive month Renewal Term will be the then market-based price for similar quantities of Commodity at the Delivery Point, including all Taxes, costs, charges or fees which are set forth herein, unless otherwise agreed to in writing by the Parties.
Delivery Point:	The Delivery Point shall be the point(s) where Commodity is delivered to the Utility. The Utility is specified on Exhibit A.
Contract Quantity:	Customer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed on the Exhibit A, provided, that for purposes of determining whether a Material Usage Deviation has occurred and for purposes of calculating Contract Quantities remaining to be delivered under Section 12 of the Agreement, Contract Quantity shall be determined by reference to the historical monthly usage for such Service Locations.
Tax Exemption Status:	<input type="checkbox"/> Non-Exempt <input checked="" type="checkbox"/> Exempt If exempt, must attach certificate.
Purchase Price:	The Purchase Price per kWh to be paid by Buyer for the services provided hereunder during the Delivery Period of this Transaction Confirmation shall be that set forth on the Exhibit A. The Purchase Price includes applicable costs for Commodity procured in accordance with Direct Energy's policies; transmission and distribution losses; all applicable costs for Ancillary Services; Capacity (as mandated by the PJM OATT and Operating Agreement, or as modified by PJM or approved by FERC); any applicable Network Integration Transmission Service (NITS) charges, including Regional Transmission Expansion Planning (RTEP); Renewable Portfolio Standard (RPS); Reliability Must Run (RMR) charges; Auction Revenue Rights; Marginal Loss Wholesale Credit; and the Services Fee. NITS, including RTEP, is a cost component included in the Purchase Price for accounts within the AEP Ohio (Ohio Power and Columbus Southern) Utilities. If Buyer's Utility is Dayton Power and Light, Duke Energy, Ohio Edison, The Illuminating Company, or Toledo Edison, then NITS, including RTEP and certain transmission-related ancillary services, will not be included in the Purchase Price, and will be recovered by the Utility. If, for whatever reason, the NITS charges are not recovered by the Utility, then Seller may commence billing Buyer for NITS charges, including RTEP, which applicable costs will be passed through to be paid by Buyer above the Purchase Price. RMR is a cost component included in the Purchase Price for accounts within the AEP Ohio (Ohio Power and Columbus Southern) Utilities. If Buyer's Utility is Duke Energy, Dayton Power and Light, Ohio Edison, The Illuminating Company or Toledo Edison, then RMR will not be included in the Purchase Price, and will be recovered by the Utility. If, for whatever reason, the RMR charges are not recovered by the Utility, then Seller may commence billing Buyer for RMR charges, which applicable costs will be passed through to be paid by Buyer above the Purchase Price. Without limitation on any other rights or remedies, Purchase Price does not include (i) transmission costs and charges beyond May 31st, 2015 which arise from, or relate to, The Public Utilities Commission of Ohio not accepting the transmission rider proposed in docket 13-

	2385-EL-SSO or (ii) any other change in Law(s). Any such costs and charges are in addition to the Purchase Price and will be passed through to Buyer by Seller.
Bill type:	Utility Consolidated Billing (External Rate Ready)
Definitions:	<p>"Ancillary Services" means wholesale commodity services and products required to facilitate delivery of Commodity to the Utility.</p> <p>"Capacity" means the Capacity obligations met through the provisions of the PJM Reliability Assurance Agreement (RAA).</p> <p>"Energy" means the combination of Commodity and Ancillary services and Transmission Services which are provided by Seller under this Agreement.</p> <p>"Exhibit A" refers to the list of Service Locations attached to this Transaction Confirmation, which list specifies the Service Locations covered under the scope of this Transaction Confirmation for PowerPortfolio, Day-Ahead and other index products. For fixed price products, it refers to the pricing attachment to this Transaction Confirmation that sets forth (together with this Transaction Confirmation) the Purchase Price applicable to, and the Service Locations covered by, this Transaction Confirmation.</p> <p>"PJM" means the Pennsylvania New Jersey Maryland Interconnection, L.L.C.</p> <p>"Reliability Must Run" (RMR) is a unit that must run for operational or reliability reasons, regardless of economic considerations. Also called reliability agreement.</p> <p>"Renewable Portfolio Standard (RPS)" is a regulation that requires the increased production of energy from renewable energy sources.</p> <p>"Services Fee" is the fee for the services provided by Seller to meet the Service Locations' load requirements, which is included in the Purchase Price to be paid by Buyer.</p>
Special Provisions:	<p>1. Change in Utility Account Numbers: The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations attached in the Exhibit A, or any replacement account number issued by the Utility from time to time.</p> <p>2. Third Party Charges: Customer acknowledges that any costs assessed by the Utility or any third party as a result of Customer's switch to or from Seller, including but not limited to switching costs, are not included in the Purchase Price and shall be the responsibility of the Customer.</p> <p>3. Material Usage Deviation: Section 8(A) of the Agreement is deleted in its entirety and replaced with the following: "If there is a Material Usage Deviation, Buyer will be responsible for the losses and costs, including the costs of obtaining and/or liquidating the applicable volume, based upon the difference between the applicable Contract Quantity and Actual Quantity. Buyer will pay the amount of such losses and costs to Seller within fifteen (15) Business Days of Seller's invoice. "Material Usage Deviation" means any deviation in Actual Quantity at the Service Location(s) stated in the related Transaction Confirmation from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in that Transaction Confirmation of +/- 100% or more."</p> <p>4. End User: The following warranty shall be added to Section 13(B), Representations and Warranties of the Agreement: "(g) Buyer represents and warrants that it is the intended end-use customer for all Commodity purchased under this Agreement, has entered into this Agreement for non-speculative purposes, and will not resell any of the Commodity purchased under this Agreement."</p> <p>5. Utility Charges: Buyer's failure to pay Utility charges may result in Buyer being disconnected in accordance with such Utility's tariff, and if Buyer switches back to the Utility, Buyer may or may not be served under the same rates, terms and conditions that apply to customers served by the Utility.</p> <p>6. Without limiting anything in this Transaction Confirmation, as a condition to Seller's obligations hereunder, Buyer must be accepted by Seller and the Utility to receive a consolidated utility bill for both services and Energy provided by Seller and delivery services provided by the Utility.</p> <p>7. Utility Consolidated Bill: Without limiting Section 2 "Performance", as a condition precedent to Seller's acceptance of this Agreement, Buyer must be accepted by Seller and the Utility to receive a consolidated utility bill for both services as described herein, Energy (provided by Seller) and delivery services (provided by the Utility). Buyer will receive from Utility a monthly invoice, incorporating both the services provided under this Agreement and Utility charges, in accordance with the Utility's meter reading and billing cycle schedule. Seller shall have the right to assign to Utility all amounts due from Buyer to Seller and Buyer is to remit payment in full to the Utility. If Buyer fails to remit payment in full in any month, a late payment charge will be assessed at the same rate and in the same manner as Utility applies late payment charges to its unpaid charges. The Utility may, at its option, disconnect all services to Buyer for any failure by Buyer to make full payment of all amounts billed in accordance with Public Utility Commission of Ohio's rules for residential and non-residential service. In the case of such disconnection, Buyer shall be responsible for any and all charges required to reconnect service, if Buyer is disconnected, terminated, suspended, or withdraws from the utility consolidated program then it shall be in default and as such, this Agreement shall terminate and Buyer shall be responsible for any applicable Net Settlement Amount and/or Close-out Value. Notwithstanding the above and for termination not caused by disconnection by the Utility, Seller, may at its sole option continue to provide services as described herein and Energy in the case of early termination, suspension or withdrawal from such program. If so, the Agreement will not terminate and billing will proceed on a dual bill basis pursuant to Section 4.</p> <p>Notwithstanding anything to the contrary of the above, if Buyer is enrolled or becomes enrolled in any net metering program, Buyer understands and agrees that Seller will modify Buyer's billing option to a dual bill option consistent with Section 4.</p> <p>8. Change in Law: In Section 3 the third sentence is amended to "If Seller concludes that a change in any Law(s) or any changes to the utility consolidated bill program increase Seller's costs, the Purchase Price may be adjusted by Seller to reflect such costs."</p> <p>9. Confirmation Notice and Right to Rescind: If Buyer's annual usage at the time of contracting is in excess of 700,000 annual kWhs, this section shall not apply. If Buyer's annual usage at the time of contracting is less than or 700,000 kWhs annually, the Utility will send to Buyer a confirmation notice that Buyer has selected Seller to provide Buyer's Commodity. Further, if Buyer's annual usage is less than 700,000 kWhs at the time of contracting, BUYER HAS UNTIL MIDNIGHT OF THE SEVENTH (7TH) CALENDAR DAY FOLLOWING THE POSTMARK DATE ON THE CONFIRMATION NOTICE SUBMITTED TO BUYER BY THE UTILITY TO CANCEL (RESCIND) THIS AGREEMENT. Buyer must contact the Utility to cancel/rescind this Agreement and may do so orally, electronically or in writing. Any such rescission must be promptly communicated by Buyer to Seller.</p>

BUYER: STRONGSVILLE, CITY OF

By:



Thomas P. Perciak, Mayor

SELLER: Direct Energy Business, LLC

By:

10/19/2015 8:01:34 AM

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Contract ID: 2238082

DEB_TC_OH_Fixed AI_100 MAC_UCB_022215 Version: 02/22/2015 09:38:46 PM

Thomas P. Perciak

Name: Thomas P. Perciak
Title: Mayor
Date: Oct 20, 2015

Name: _____
Title: _____
Date: _____





This Commodity Master Agreement ("CMA") among Direct Energy Business, LLC, Direct Energy Business Marketing, LLC d/b/a Direct Energy Business, (collectively "Seller"), each a Delaware limited liability company, and STRONGSVILLE, CITY OF ("Buyer" or "Customer"), (each a "Party" and collectively, the "Parties") is entered into and effective as of October 19, 2015

1. Transactions: The terms of this CMA apply to all end-use sales of electric power ("Electricity") and/or natural gas ("Gas") as applicable (each a "Commodity" and collectively, the "Commodities"), by the applicable Seller party to Buyer (each sale a "Transaction") which will be memorialized in a writing signed by both Parties (each a "Transaction Confirmation"). Each Transaction Confirmation shall set forth the Seller party providing service to Customer for such Transaction. If a conflict arises between the terms of this CMA and a Transaction Confirmation, the Transaction Confirmation will control with respect to that particular Transaction. This CMA, any amendments to this CMA and related Transaction Confirmation(s) (together, a single integrated, "Agreement") is the entire understanding between Parties with respect to the Commodities and supersedes all other communication and prior writings with respect thereto; no oral statements are effective.

2. Performance: The Parties' obligations under this Agreement are firm. Buyer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Contract Quantity of Commodity specified in a Transaction Confirmation in accordance with the terms of this Agreement. Buyer will only use the Commodity at the listed Service Locations in the applicable Transaction Confirmation and will not resell the Commodity or use it at other locations without Seller's prior written consent.

3. Purchase Price: Buyer will pay the Purchase Price stated in each Transaction Confirmation. If the Purchase Price incorporates an index and the index is not announced or published on any day for any reason or if the Seller reasonably determines that a material change in the formula for or the method of determining the Purchase Price has occurred, then the Parties will use a commercially reasonable replacement price that is calculated by the Seller. If Seller concludes that a change in any Law(s) increases Seller's costs, the Purchase Price may be adjusted by Seller to reflect such costs. "Law(s)" mean all tariffs, laws, orders, rules, decisions, taxes, regulations, transmission rates, and Utility changes to Buyer's monthly capacity and/or transmission obligations.

4. Billing and Payment: Seller will invoice Buyer for the Actual Quantity of Commodity and for any other amounts incurred by Buyer under this Agreement. Payment is due within fifteen (15) days of the date of the invoice. If an invoice is issued and the Actual Quantity cannot be verified by the time, the invoice will be based on Seller's good faith estimate of the Actual Quantity. Seller will adjust Buyer's account following (i) confirmation of the Actual Quantity, (ii) any Utility discrepancy or adjustment or (iii) any other corrections or adjustments, including adjustments to, or re-calculation of, Taxes. Buyer will pay interest on late payments at 1.5% per month or, if lower, the maximum rate permitted by law ("Interest Rate"). Buyer is also responsible for all costs and fees, including reasonable attorney's fees, incurred in collecting payment. "Actual Quantity" means the actual quantity of Commodity that is either delivered or metered, as applicable, to Buyer's account. "Utility" means a state regulated entity engaged in the distribution of Gas or Electricity.

5. Taxes: Buyer is responsible for paying any Taxes associated with the Actual Quantity of Commodity sold under this Agreement that may become due at and after the Delivery Point. The Purchase Price does not include Taxes that are or may be the responsibility of the Buyer, unless such inclusion is required by Law. Buyer will reimburse Seller for any Taxes that Seller is required to collect and pay on Buyer's behalf and will indemnify, defend and hold Seller harmless from any liability against all Buyer's Taxes. Buyer will furnish Seller with any necessary documentation showing its exemption from Taxes, if applicable, and Buyer will be liable for any Taxes assessed against Seller because of Buyer's failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the term of this Agreement. Liabilities imposed in this Section will survive the termination of this Agreement.

6. Disputes: If either Party in good faith disputes amounts owed under Sections 3, 4, 5 and 8, the disputing Party will contact the non-disputing Party promptly and pay the undisputed amount by the payment due date. The Parties will negotiate in good faith regarding such dispute for a period of not more than fifteen (15) Business Days. In the event the Parties are unable to resolve such dispute, the disputing Party will pay the balance of the original invoice and either Party may exercise any remedy available to it in law or equity pursuant to this Agreement. In the event of a dispute other than for an invoiced amount, the Parties will use their best efforts to resolve the dispute promptly. Actions taken by a Party exercising its contractual rights will not be construed as a dispute for purposes of this Section. "Business Day" means any day on which banks are open for commercial business in New York, New York; any reference to "day(s)" means calendar days.

7. Title and Risk of Loss: Title to, possession of and risk of loss to the Commodity will pass to Buyer at the Delivery Point specified in the applicable Transaction Confirmation.

8. Buyer's Usage Obligations:

A. Material Usage Deviation If there is a Material Usage Deviation, Buyer will be responsible for the losses and costs, including the costs of obtaining and/or liquidating the applicable volume, based upon the difference between the applicable Contract Quantity and Actual Quantity. Buyer will pay the amount of such losses and costs to Seller within fifteen (15) Business Days of Seller's invoice. "Material Usage Deviation" means any deviation in Actual Quantity at the Service Location(s) stated in the related Transaction Confirmation from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in that Transaction Confirmation of +/- 25% or more, which is not caused by weather.

B. Balancing Charges: For Transactions involving the purchase and sale of Gas only, Buyer will be responsible for Balancing Charges unless Prior Notice of a material variation in usage is provided to Seller and actual usage is consistent with that Prior Notice. "Balancing Charges" means Utility fees, costs or charges and penalties assessed for failure to satisfy the Utility's balancing and/or nomination requirements. "Prior Notice" is defined as forty-eight (48) hours before the start of the Gas Day for which the material variation in usage will apply. "Gas Day" means a period of 24 consecutive hours as defined by the Utility. Buyer will make any payment due pursuant to this Section within five (5) Business Days of the date of Seller's invoice.

C. Curtailments: For Transactions involving the purchase and Sale of Gas only, if Buyer is directed by its Utility to curtail its usage, in whole or in part, Buyer will curtail as directed. If Buyer fails to curtail as directed, Buyer will pay or reimburse Seller for all Balancing Charges assessed by the Utility. Payment by Buyer of any Balancing Charges will be due within five (5) Business Days of the date of Seller's invoice.

9. Force Majeure: A Party claiming Force Majeure will be excused from its obligations under Section 2 as long as it provides prompt notice of the Force Majeure and uses due diligence to remove its cause and resume performance as promptly as reasonably possible. During a Force Majeure, Buyer will not be excused from its responsibility for Balancing Charges nor from its responsibility to pay for Commodity received. "Force Majeure" means a material, unavoidable occurrence beyond a Party's control, and does not include inability to pay, an increase or decrease in Taxes or the cost of Commodity, the economic hardships of a Party, or the full or partial closure of Buyer's facilities, unless such closure itself is due to Force Majeure.

10. Financial Responsibility: Seller's entry into this Agreement and each Transaction is conditioned on Buyer, its parent, any guarantor or any successor maintaining its creditworthiness during the Delivery Period and any Renewal Term. When Seller has reasonable grounds for insecurity regarding Buyer's ability or willingness to perform all of its outstanding obligations under any agreement between the Parties, Seller may require Buyer to provide adequate assurance, which may include, in the Seller's discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance ("Credit Assurance").

11. Default: "Default" means: (i) failure of either Party to make payment by the applicable due date and the payment is not made within three (3) Business Days of a written demand; (ii) failure of Buyer to provide Credit Assurance within two (2) Business Days of Seller's demand; (iii) either Party, its parent or guarantor, becomes Bankrupt or fails to pay its debts generally as they become due; or (iv) failure of either Party to satisfy any representations and warranties applicable to it contained in Section 13A or 13B and the failure is not cured within fifteen (15) Business Days of a written demand, provided that no cure period or demand for cure applies to a breach of Section 13A(c). "Bankrupt" means an entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent, however evidenced, (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (e) has a secured party take possession of all or any substantial portion of its assets or (f) is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

12. Remedies: In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance; (ii) upon written notice, provided that no notice is required with respect to Section 11(iii) or a breach of Section 13A(c), accelerate any or all amounts owing between the Parties and terminate any or all Transactions and/or this Agreement; (iii) calculate a settlement amount by calculating all amounts due to Seller for Actual Quantity and the Close-out Value for each Transaction being terminated; and/or (iv) net or aggregate, as appropriate, all settlement amounts and all other amounts owing between the Parties and their affiliates under this Agreement and other energy-related agreements between them and their affiliates, whether or not then due and whether or not subject to any contingencies, plus costs incurred, into one single amount ("Net Settlement Amount"). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within three (3) Business Days of written notice from the non-defaulting Party. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the Interest Rate. "Close-out Value" is the sum of (a) the amount due to the non-defaulting Party regarding the Contract Quantities (or, as applicable, estimated Contract Quantities) remaining to be delivered as stated in the applicable Transaction Confirmation(s) during the Delivery Period or, if applicable, the current Renewal Term, calculated by determining the difference between the Purchase Price and the Market Price for such quantities; and (b) without duplication, any net losses or costs incurred by the non-defaulting Party for terminating the Transaction(s), including costs of obtaining, maintaining and/or liquidating commercially reasonable hedges, Balancing Charges and/or transaction costs. "Market Price" means the price for similar quantities of Commodity at the Delivery Point during the Delivery Period or Renewal Term, as applicable. For purposes of determining Close-out Value, (i) Market Price will be determined by the non-defaulting Party in good faith as of a date and time as close as reasonably practical to the date and time of termination or liquidation of the applicable Transaction(s), and (ii) Market Price may be ascertained through reference to quotations provided by recognized energy brokers or dealers, market indices, bona-fide offers from third-parties, or by reference to commercially reasonable forward pricing valuations. The Parties agree that the Close-out Value constitutes a reasonable approximation of damages, and is not a penalty or punitive in any respect. Seller may, but need not, physically liquidate a Transaction or enter into a replacement transaction to determine Close-out Value or Net Settlement Amount. The defaulting Party is responsible for all costs and fees incurred for collection of Net Settlement Amount, including, reasonable attorney's fees and expert witness fees.

13. Representations and Warranties: Each of the following are deemed to be repeated each time a Transaction is entered into:

A. Each Party represents that: **(a)** it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; **(b)** the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and **(c)** it is not Bankrupt.

B. Buyer represents and warrants that: **(a)** it is not a residential customer; **(b)** it will immediately notify Seller of any change in its ownership; **(c)** execution of this Agreement initiates enrollment and service for the Delivery Period and any Renewal Term; **(d)** no communication, written or oral, received from the Seller will be deemed to be an assurance or guarantee as to any results expected from this Agreement; **(e)** if it is executing this Agreement in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide documentation of such agency relationship, and **(f)** (i) it will provide, to Seller, information reasonably required to substantiate its usage requirements, including information regarding its business, locations, meter/account numbers, historical/projected usage, time of use, hours of operation, utility rate classes, agreements, schedules, which in substantial part form the basis for the calculation of charges for the transactions hereunder; (ii) acceptance of this Agreement constitutes an authorization for release of such usage information; (iii) it will assist Seller in taking all actions necessary to effectuate Transactions, including, if requested, executing an authorization form permitting Seller to obtain its usage information from third parties; and (iv) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement.

C. Each Party acknowledges that: **(a)** this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code ("Code"); **(b)** this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity; **(c)** Seller is not a "utility" as defined in the Code; **(d)** Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by the Buyer's Utility; and **(e)** Buyer's Utility, and not Seller, is responsible for responding to leaks or emergencies should they occur.

14. Other:

(a) This Agreement, and any dispute arising hereunder, is governed by the law of the state in which the Service Locations are located, without regard to any conflict of rules doctrine. **(b)** Each Party waives its right to a jury trial regarding any litigation arising from this Agreement. **(c)** No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy. **(d)** Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity will be free from all royalties, liens, encumbrances, and claims. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED. **(e)** Buyer will be responsible for and indemnify Seller against all losses, costs and expenses, including court costs and reasonable attorney's fees, arising out of claims for personal injury, including death, or property damage from the Commodity or other charges which attach after title passes to Buyer. Seller will be responsible for and indemnify Buyer against any losses, costs and expenses, including court costs and reasonable attorneys' fees, arising out of claims of title, personal injury, including death, or property damage from the Commodity or other charges which attach before title passes to Buyer. **(f)** NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THE AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. **(g)** All notices and waivers will be made in writing and may be delivered by hand delivery, first class mail (postage prepaid), overnight courier service or by facsimile and will be effective upon receipt; provided, however, that any termination notice may only be sent by hand or by overnight courier service, and, if sent to Seller, a copy delivered to: Direct Energy Business, Attn: Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222, Pittsburgh, PA 15222; Phone: (888) 925-9115; Fax: (866) 421-0257; Email: CustomerRelations@directenergy.com. **(h)** If Buyer and Direct Energy Business Marketing, LLC entered into Commodity transactions prior to the execution of this Agreement ("Existing Transactions"), the Parties agree that these Existing Transactions shall be Transactions governed under the terms of this Agreement. This Agreement supersedes and replaces any other agreement that may have applied to the Existing Transactions. Note that this subsection (i) shall not apply to any Commodity transactions or agreements entered into between Buyer and Direct Energy Business, LLC. **(i)** No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. **(j)** Seller may assign this Agreement without Buyer's consent. Buyer may not assign this Agreement without Seller's consent, which consent will not be unreasonably withheld. In addition, Seller may pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds of this Agreement in connection with any financing or other financial arrangements without Buyer's consent; in which case Seller shall not be discharged from its obligations to Buyer under this Agreement. **(k)** This Agreement may be executed in separate counterparts by the Parties, including by facsimile, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. **(l)** Any capitalized terms not defined in this CMA are defined in the Transaction Confirmation or shall have the meaning set forth in the applicable Utility rules, tariffs or other governmental regulations, or if such term is not defined therein then it shall have the well-known and generally accepted technical or trade meanings customarily attributed to it in the natural gas or electricity generation industries, as applicable. **(m)** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement. **(n)** Any executed copy of this Agreement and other related documents may be digitally copied, photocopied, or stored on computer tapes and disks ("Imaged Agreement"). The Imaged Agreement will be admissible in any judicial, arbitration, mediation or administrative proceedings between the Parties in accordance with the applicable rules of evidence; provided that neither Party will object to the admissibility of the Imaged Agreement on the basis that such were not originated or maintained in documentary form. **(o)** Where multiple parties are Party to this Agreement with Seller and are represented by the same agent, it is agreed that this Agreement will constitute a separate agreement with each such Party, as if each such Party had executed a separate Agreement, and that no such Party shall have any liability under this document for the obligations of any other Parties. **(p)** This CMA may be terminated by either Party upon at least thirty (30) days' prior written notice;

provided, however, that this CMA will remain in effect with respect to Transactions entered into prior to the effective date of the termination until both Parties have fulfilled all of their obligations with respect to the outstanding Transactions. (q) Buyer will not disclose the terms of this Agreement, without prior written consent of the Seller, to any third party, other than Buyer's employees, affiliates, agents, auditors and counsel who are bound by substantially similar confidentiality obligations, trading exchanges, governmental authorities, courts, adjudicatory proceedings, pricing indices, and credit ratings agencies; provided that if Buyer receives a demand for disclosure pursuant to court order or other proceeding, it will first notify Seller, to the extent practicable, before making the disclosure.

IN WITNESS WHEREOF, this CMA is entered into and effective as of the date written above.

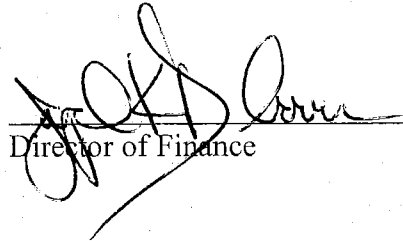
BUYER: STRONGSVILLE, CITY OF	SELLER: DIRECT ENERGY BUSINESS, LLC
By: <u><i>Thomas F. Perciak</i></u>	DIRECT ENERGY BUSINESS MARKETING, LLC
Print Name: <u>Thomas F. Perciak</u>	By: _____
Title: <u>Mayor</u>	Print Name: _____
Date: <u>Oct 20, 2015</u>	Title: _____
	Date: _____



CERTIFICATION OF FUNDS

I, Joseph K. Dubovec, Director of Finance for the City of Strongsville, Ohio do hereby certify that the monies required to meet the requirements of this Agreement, commencing January, 2016, will be subject to future annual appropriations by City Council providing for payment of such obligations from the City's appropriate funds, free from prior encumbrance and in accordance with law.

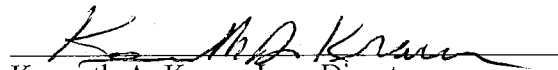
October 20, 2015
Date



Director of Finance

CERTIFICATE OF LAW DIRECTOR

I hereby certify that I have reviewed and approved the form of the foregoing Agreement this 20 day of October 2015.



Kenneth A. Kraus, Law Director



STEC-B
Rev. 3/15/04

Sales and Use Tax Blanket Exemption Certificate

The purchaser hereby claims exception or exemption on all purchases of tangible personal property and selected services made under this certificate from:

Direct Energy Business LLC

(vendor's name)

and certifies that the claim is based upon the purchaser's proposed use of the items or services, the activity of the purchase, or both, as shown hereon:

MUNICIPALITY

Purchaser must state a valid reason for claiming exception or exemption.

The City Of Strongsville

Purchaser's name

16099 Foltz Parkway

Street address

Strongsville, Ohio 44136

City, state, ZIP code

Signature

Title

Director of Finance

Oct 19, 2015

Date signed

18-392398

Vendor's license number, if any

Vendors of motor vehicles, titled watercraft and titled outboard motors may use this certificate to purchase these items under the "resale" exception. Otherwise, purchaser must comply with either rule 5703-9-10 or 5703-9-25 of the Administrative Code.

This certificate cannot be used by construction contractors to purchase material for incorporation into real property under an exempt construction contract. Construction contractors must comply with rule 5703-9-14 of the Administrative Code.