

ORDINANCE NO.: 2016- 24
INTRODUCED BY: MR. NEWELL

3926

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A
COMPETITIVE RETAIL ELECTRIC SERVICE CONTRACT
WITH NEXTERA ENERGY SERVICES OHIO, LLC AND
DECLARING AN EMERGENCY.**

WHEREAS, the Village desires to enter into a Contract with NextEra Energy Services Ohio, LLC (“Supplier”) whereby the Supplier would provide the Village waste water treatment plant with electrical service under the terms and conditions of the Agreement; and

WHEREAS, the Village is able to lock in a favorable rate for the term set forth in the Contract.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:

SECTION 1. That the Mayor is authorized and directed to enter into a Competitive Retail Electric Service Contract with the Supplier to supply electrical service for the Village waste water treatment plant pursuant to the terms and conditions as set forth in the Contract which is attached hereto and incorporated herein as “**Exhibit A**”.


SECTION 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the habitants of the Village and for the further reason that this Ordinance is necessary to be effective immediately in order to lock in a favorable price for electrical service; wherefore, provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be in force after the earliest period allowed by law.

**ORDINANCE NO. 2016-24
INTRODUCED BY: MR. NEWELL**

PASSED: May 23, 2016

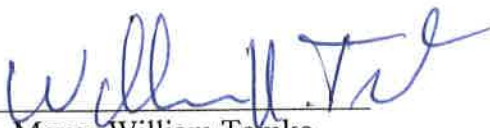

Karl Maersch, Council President

Submitted to the Mayor for
his approval on this

24 day of May, 2016

Approved by the Mayor

May 24, 2016


Mayor William Tomko

I hereby certify that Ordinance No. 2016- 24 was duly enacted on the 23 day of May, 2016, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.


Clerk of Council



**COMPETITIVE RETAIL
ELECTRIC SERVICE
CONTRACT**

OHIO
Governmental Mercantile
Standard Variable Product
(Non-Aggregation)

This Competitive Retail Electric Service Contract ("Agreement") is between NextEra Energy Services Ohio, LLC ("Supplier") and CHAGRIN FALLS, VILLAGE OF ("Customer") (each a "Party" hereunder). Supplier shall provide Customer with Service under all of the terms and conditions stated in this Agreement, including the Terms of Service ("TOS"), attached hereto, for the Electric Distribution Utility ("EDU") accounts ("Accounts") identified in Addendum A, attached and made a part hereof.

	Supplier Contact Information	Customer Contact Information
INTERNET:	www.nexteraenergyservices.com	Ben Himes
EMAIL:	contracts@nexteraenergyservices.com	ben@chagrin-falls.org
MAILING ADDRESS:	NextEra Energy Services Ohio, LLC 20455 State Highway 249 Suite 200 ATTN: Contract Administration Houston, TX 77070	21 W WASHINGTON ST CHAGRIN FALLS, OH 44022
TELEPHONE:	877.528.2890	(440) 247-5050
FAX:	800.627.8813	
HOURS:	8:00 am CT - 5:00 pm CT	

24 HOUR SERVICE OUTAGE REPORTING: Should an outage or other service disruption occur, Customer should contact the appropriate Electric Distribution Utility: Call 1-888-544-4877 for Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison.

PRODUCT DESCRIPTION: The product is full requirements electric generation service ("Service").

PRICE: The Price for Service during the Initial Term shall be \$0.05040 per kilowatt hour ("kWh"). The Price includes costs and charges for electric energy, and estimated costs and charges for the following additional components of Service: congestion, line losses, renewable energy credits, ancillary services, generation deactivation, capacity and similar generation resource adequacy plans, and transmission services (where applicable), subject to any adjustments resulting in Pass-Through Charges (as defined in the TOS). The Price excludes any EDU charges, Pass-Through Charges, and Taxes as described in the Payments provision of this Agreement.

INITIAL TERM: 36 months, starting after the date Service starts as to each Account and ending upon the meter read date in such end month, subject to any applicable EDU terms and conditions.

START DATE: The date in or after June 2017 on which the EDU switches the Account to NextEra Energy Services.

HOLDOVER PRICE: Holdover Price means the price set forth on the Supplier's website at www.nexteraenergyservices.com in the "For Business" section under "Legal Notices and Terms" for the state in which Service is provided. The Holdover Price shall apply for Service provided by Supplier after the Initial Term if Supplier and Customer do not enter into a new or renewal agreement and Supplier continues to provide Service.

PAYMENTS: Customer shall pay the total monthly charge for Service ("Supplier Electricity Charge") as billed during the term of this Agreement. The Supplier Electricity Charge is the sum of (i) the product of Customer's total metered energy usage for the Accounts during an EDU billing cycle and the Price or Holdover Price, whichever is applicable, (ii) any Pass-Through Charges, and (iii) Taxes, if applicable.

EXHIBIT "A"

Terms of Service

Customer

Authorized Signature: William A. Tomko
 Print Name: WILLIAM A. TOMKO
 Title: MAYOR
 Date: MAY 25, 2016

Supplier

Authorized Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

Term. This Agreement shall be effective upon the date it has been executed by both parties ("Effective Date"). Service from Supplier shall commence upon the date the EDU transfers each Account to Supplier and continue through expiration of the Initial Term. After the Initial Term expires, this Agreement shall continue on a month-to-month basis at the Holdover Price unless and until either Party terminates this Agreement upon at least thirty (30) days written notice to the other, in which event such termination shall be effective on the date following the date of such notice on which the EDU successfully switches Customer's Account(s) to another competitive electricity supplier or to the EDU's electric supply.

Transfer of Service. Supplier will work with the EDU to transfer Service to each Account to Supplier in accordance with the applicable EDU tariff. Because of EDU processing, Supplier cannot guarantee the date by which transfer of any Account may be completed. The EDU may charge switching fees to the Customer.

Customer's Service. Customer shall receive Service for each Account in accordance with the terms of this Agreement and authorizes Supplier to cause the EDU to transfer the Accounts to Supplier. Customer hereby provides Supplier with all necessary authority to obtain Customer's current and historical electricity cost and usage data from the EDU, and Customer's payment and credit history and other information reasonably requested by Supplier. Customer agrees, upon request, to provide Supplier with facility descriptions, operating information, Account numbers and service locations, and such other information available to Customer and reasonably requested by Supplier. Customer represents and warrants that Customer is a Mercantile Customer as defined by Ohio law. Customer hereby waives Customer's rights under the PUCO rules applicable to electricity supply by CRES providers to the extent allowable under PUCO rules and applicable law, and except as otherwise provided in this Agreement

Payments. "Pass-Through Charges" means new or increased costs and charges with respect to the purchase, sale, acquisition, delivery, transmission and/or distribution of electricity including, without limitation, those arising from MCU Events, or any event under the Legal Changes and Compliance section below, all of which shall be passed through to Customer by Supplier. Depending on the bill format, Pass-Through Charges may appear on Customer's bill as a line item or Price adjustment. "Taxes" means all federal, state, municipal or other governmental taxes, duties, fees, levies, premiums, assessments, surcharges, withholdings, or any other charges of any kind, if applicable, to Customer, any or all of which relate to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed thereon, but excluding taxes on net income.

By signing, Customer consents to billing through one of the following options, as permitted by law, at Supplier's discretion: (i) Customer will receive one invoice from the EDU that includes the Supplier Electricity Charge, the EDU

Delivery Charges and applicable Taxes (the "Consolidated Billing Option"); or (ii) Customer will receive two invoices, one from Supplier for the Supplier Electricity Charge and one from the EDU for the EDU delivery charges, each with applicable Taxes (the "Dual Billing Option"). Under the Consolidated Billing Option, Customer will make payments directly to the EDU pursuant to the applicable EDU tariff. Under the Dual Billing Option, payments are due directly to Supplier on or before sixteen (16) days after the billing date on Customer's invoice or the postmark date, whichever is later. If the EDU fails to timely obtain or transmit a meter reading, Supplier may issue or cause to be issued a bill to Customer based on its estimated energy usage and charges. In the event of a billing error, Supplier may issue a corrective invoice which Customer shall pay. Customer has the right to request from Supplier, twice within a twelve month period, up to twenty-four months of Customer's payment history without charge. If Customer fails to pay any amount when due, Customer will pay a late fee for all past due amounts equal to the lesser of 1.5% per month or the maximum charge allowed by law.

Credit Support. If at any time Supplier determines in its reasonable discretion that Customer cannot demonstrate satisfactory creditworthiness, there has been a material adverse change in Customer's creditworthiness, or Customer fails to timely pay amounts when due or is otherwise in default of its obligations under this Agreement, then Supplier may require Customer to provide Supplier with a cash deposit or other credit support in an amount and form reasonably acceptable to Supplier. Credit review will typically be performed using credit agency reports (e.g. Dunn & Bradstreet, Standard & Poor's and/or Moody's) and deposits will typically not exceed 2 months of expected Customer billings. If utilized, any deposit balance remaining will be returned to Customer.

Material Change in Usage ("MCU"). Customer shall provide Supplier at least thirty (30) days advance notice whenever Customer has reason to believe that Customer's estimated monthly aggregate usage will increase or decrease by more than 25% (each such material change being an "MCU Event"), and shall provide good faith estimates of such usage changes. For each MCU Event, regardless of whether notice is provided, Customer shall pay Supplier for any losses, or new or increased costs and charges, reasonably associated with such MCU Event and incurred by Supplier. Such losses, and/or costs and charges may be charged to Customer by Supplier as Pass-Through Charges.

Legal Changes and Compliance. "Change in Law" means a change in Applicable Law. "Applicable Law" means any law, regulation, rule, ordinance, order or decree by a governmental authority or the Regional Transmission Operator ("RTO")/Independent System Operator ("ISO"), including, without limitation, EDU tariffs (including, without limitation, rate class definitions and/or delivery voltage/service level requirements), RTO/ISO rules or protocols (including, without limitation, those affecting any fees, costs, or charges imposed by the RTO/ISO), market rules, load profiles, methods by which the EDU or the RTO/ISO calculates usage, nodal and zonal definitions, and/or ISO boundaries. A "change" includes, without limitation, any amendment, modification, nullification, suspension,

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al, finding of unconstitutionality or unlawfulness or any change in construction, interpretation or outcome. Notwithstanding any provision in this Agreement to the contrary, if there is a Change in Law and such Change in Law results in Supplier incurring material new or increased costs or charges in providing the Services contemplated herein, or if there are any material new or increased costs or charges incurred by Supplier, including costs or charges for renewable energy credits, capacity and/or network integrated transmission service, to comply with Applicable Law, such new or increased costs or charges shall be paid by Customer as Pass-Through Charges.

Title. Title to and risk of loss of the electric energy, ancillary services, renewable energy credits, and every other component of the Service provided hereunder shall pass to Customer at the point at which Supplier provides such component to the EDU.

Force Majeure. Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement (except with respect to any payment obligations under this Agreement) to the extent such performance is prevented or delayed due to a Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any act or event that (i) renders it impossible or impractical for the affected Party to perform its obligations under the Agreement, and (ii) is beyond the reasonable control of the affected Party, including, but not limited to, storms or floods, lightning, earthquakes and other acts of God, wars, civil disturbances, revolts, terrorist activity, sabotage, theft, vandalism or other actions by third parties, fires, explosions, failures of suppliers, utility action or inaction and actions of a governmental authority. In no event shall Supplier's ability to sell electricity at a higher price, or Customer's ability to purchase electricity at a lower price, constitute a Force Majeure Event under this Agreement.

Limitation on Liability; Disclaimer. EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR SERVICE. SUPPLIER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESSED OR IMPLIED.

Early Termination Fee. Early Termination Fee ("ETF") means, as to each terminated Account(s), an amount equal to the product of: (i) the excess, if any, of the Price over the market price that is commercially available to Supplier for the same electricity usage which would have been supplied hereunder for the remainder of the Initial Term, all as reasonably determined by Supplier, and (ii) the estimated electricity usage which would have been supplied hereunder for the remainder of the Initial Term. To determine the "market price that is commercially available to Supplier," as used above, Supplier may consider, among other things, settlement prices of applicable NYMEX futures contracts, quotations from leading dealers in energy swap contracts and other bona fide offers from parties participating in the wholesale and/or retail power markets, which may include Supplier and/or its affiliates, all as commercially available to Supplier and all as adjusted for the length of the remaining Initial Term and otherwise as is commercially reasonable. Supplier will not be required to enter into any replacement transaction in order to determine such market price or actual damages.

Termination by Customer. If Customer terminates this Agreement, in whole or as relating to any Account(s), before the end of the Initial Term, Customer shall pay Supplier the ETF. In the event that Customer terminates this Agreement as provided for in this Section, Customer shall be

obligated to pay for the electricity and related services provided to Customer pursuant to this Agreement prior to the date that such termination becomes effective, including applicable late payment fees. The Parties agree that the ETF is a reasonable estimate of loss and not a penalty.

Termination by Supplier. Supplier reserves the right to terminate this Agreement if Customer: (i) fails to make timely payment of all amounts due Supplier; or (ii) fails to post a security deposit under the provisions of the Credit Support section within ten (10) days of a written request for deposit; or (iii) breaches any warranty or representation to Supplier; or (iv) defaults on any material other obligation under this Agreement; or (v)(A) makes an assignment for the benefit of creditors, (B) files a petition or otherwise authorizes the commencement of a proceeding under the Bankruptcy Code or similar law for protection of creditors, or has such petition filed against it, (C) otherwise becomes bankrupt or insolvent, or (D) is unable to pay its debts as they fall due. In the event Service is terminated in accordance with this Section, Customer shall pay Supplier the ETF.

Assignment. Supplier may assign its rights and obligations under this Agreement to a third party. Customer may not assign its rights and obligations under this Agreement to a third party without the prior written consent of Supplier, which consent shall not be unreasonably withheld. Supplier may deny such assignment based on the creditworthiness of the assignee, as determined by Supplier in its reasonable discretion. Any attempted assignment in violation of this Agreement shall be null and void.

Confidentiality. The Parties agree to keep all terms and provisions of this Agreement and the Service confidential and not to disclose its terms to any third parties without the prior written consent of the other Party; **provided, however,** each Party shall have the right to make any such disclosures to (i) a third party service provider who has a need to know such confidential information to provide services to the disclosing Party and is prohibited from disclosing to another party such Party's confidential information, (ii) governmental agencies, (iii) its own agents, attorneys, auditors, accountants and shareholders or members, or (iv) comply with applicable Ohio open records laws. If disclosure is sought through process of a court, a state or federal regulatory agency or open records law, the Party from whom the disclosure is sought shall provide reasonable notice thereof to the other Party.

Collection Costs. To the fullest extent permitted under Ohio law, Customer agrees to pay Supplier its reasonable attorneys' fees, expenses, and any other collection costs related to Customer's past due amounts.

Complaints. If Customer's complaint is not resolved after Customer has called NextEra Energy Services or the EDU, or for general utility information, Customer may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.PUCO.ohio.gov.

Governing Law and Venue. This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio. The exclusive venue for any suit, claim, action or other proceedings, whether at law or in equity, relating to this Agreement, shall be in the state or federal courts of competent jurisdiction sitting in Cleveland, Ohio.

Misc. Entire Agreement. This Agreement embodies the entire Agreement and understanding between the Parties, and supersedes all prior agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof. **Forward Contract.** The Parties agree that this Agreement is a "forward contract" and that Supplier is a "forward contract merchant" for purposes of the United States Bankruptcy Code, as amended, and any payment related hereto will constitute a "settlement payment" as defined in Section 101 (51A) thereof.

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Environmental Disclosure. Customer agrees that Supplier may make the required annual and quarterly environmental disclosures electronically by making such disclosures available for viewing at the Supplier's website: www.nexteraenergyservices.com.

