

## SERVICES AGREEMENT

### Professional Energy Consulting Services

This Services Agreement ("Agreement") is made and entered into and effective on this 3rd day of September 2013 ("Effective Date") by and between the **City of Urbana, Illinois** ("Municipality"), an Illinois Municipal Corporation, with offices located at 400 South Vine Street Urbana, Illinois 61801 and **Good Energy, L.P** ("Service Provider"), with an office and principal place of business located at 232 Madison Avenue, Suite 405, New York, NY 10016.

#### Recitals

WHEREAS, Municipality desires to engage Service Provider to perform electricity consultancy services and procurement for Municipality in relation to a program for the aggregation of residential and small commercial electric accounts on an opt-out basis (the "Program") in accordance and compliance with Section 92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 (the "Act"), and to provide consulting and brokerages services for any non-residential electric and natural gas accounts that Municipality owns or controls.

WHEREAS, Services Provider desires to perform the Services as hereinafter defined and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and approved, the parties, intending to be legally bound, agree as follows:

#### Provisions

- I. Performance of the Services.** Provider shall perform each of the following activities (collectively, the "Services") in a manner consistent with the best practices established for electrical aggregation program consulting services:
- A. Provide the following services:**
1. Electricity Residential and Small Commercial opt-out consulting services, including but not limited to preparation and management of opt-out notices, scrubbing of eligibility customer lists, and supervision of all other notices and publications required under the Act to facilitate the adoption and operation of the Program,
  2. Implement comprehensive marketing services for an opt-out electricity aggregation program, all at Service Provider's sole expense, per the requirements of subject regulation
  3. Coordinating efforts with the Illinois Commerce Commission
  4. Supporting Municipality and/or attending council meetings and public hearings
  5. Preparation and/or update of a Plan of Operation and Governance for the Program, in consultation with the Municipality, addressing, inter alia, each of the following issues:
    - Purpose of Municipal Electricity Aggregation
    - Background - Illinois Power Agency Act

- Opt-Out Process
  - Request for Proposal - Summary
  - Consolidated Billing Procedures
  - Credit Requirement and Default Procedures
  - Program Move-In and Move-Outs
  - Opt-In Program
  - Green Power - Renewable Energy
  - Program Education Initiative
  - Demand Management and Energy Efficiency Program
  - Power Supply Agreement
  - Pricing Methodology
  - Eligible Customer Service Classes
  - Supplier Selection Criteria
  - Selected Supplier Responsibilities
  - Liability
6. Preparation of bid specifications and procurement of competitive, fixed-price bids, with final selection of an electric supplier being decided by Municipality.
  7. Negotiating fees for the City with winning suppliers in an amount equal to, but not greater than, the rate negotiated for Good Energy, L.P. as more fully described herein.
  8. Assist with contract negotiations with the selected electricity supplier
  9. After purchase program delivery and on-going daily monitoring.
- B. Give prompt notice to Municipality should the Service Provider observe or otherwise become aware of any fault or deficit in the Program or any nonconformance with the electricity sale & purchase agreement.
- C. Remit to Municipality after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs and similar materials.
- D. Comply with all statutes, ordinances, laws, rules and regulations which may be applicable to the services provided hereunder.

**II. Obligations of Municipality.** Municipality shall:

- A. Assist the Service Provider by placing at its disposal all public information pertinent to the services for the project, upon reasonable request.
- B. Use reasonable efforts to secure release of other data applicable to the Program held by others, including but not limited to residential and small commercial customer account and load information under the authority granted in the Act.
- C. Give prompt notice to the Service Provider should Municipality observe or otherwise become aware of any fault or deficit in the Program or any nonconformance with the electricity sale and purchase agreement.
- D. Approve an ordinance to put the opt-out referendum on the ballot on the next election
- E. Conduct public hearings and adopt a Plan of Operation and Governance, each as required by the Act.
- F. Nothing herein shall be construed to require the Municipality to approve an electricity purchase and sale agreement with an alternative retail electric supplier.

**III. Term and Termination.** The Agreement shall commence on the 3rd day of September, 2013 and shall terminate on the date on which an electricity sale and purchase agreement with an alternative retail electric supplier expires or earlier terminates, or as otherwise mutually agreed to by Municipality and the Service Provider. Municipality may terminate this Agreement at any time by giving Service Provider thirty (30) days advance written notice. In the event this Agreement is terminated by Municipality prior to its natural expiration, Service Provider shall be paid for the volume of electricity purchased through the residential and small commercial opt-out contract by the current alternative retail electric supplier through the next meter read date following the date of expiration of any executed (if any) electricity contract with a current alternative retail electric supplier.

**IV. Payment.** Subject to the Municipality's termination rights described in Section III, Municipality agrees that Good Energy fees will be paid by the selected electricity supplier per kWh (volumetrically) for electricity purchased for the duration of the municipal contract. Such fees will be not greater than \$0.00050 / kWh through June 30, 2014, and not greater than \$0.00075 / kWh thereafter. In the event the ballot proposition for the approval of an opt-out electricity aggregation program fails at the next election, the Service Provider shall not receive a fee.

**V. Relationship of the Parties.** The parties acknowledge and agree that Service Provider is an independent contractor and is not an agent or employee of Municipality. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Municipality of a partnership, association, or joint venture.

**VI. Indemnification.**

- A. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the Service Provider agrees to indemnify, defend and save Municipality, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury claimed to arise from a negligent act, error or omission by the Service Provider or its employees.
- B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless Municipality, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the Service Provider, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused to in whole or in part by the acts or omissions of the Service Provider, any subconsultant(s) of the Service Provider, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Municipality shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Contract.

**VII. Insurance.**

- A. The Service Provider shall secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect itself from any claim arising out of the performance of professional services and caused by negligent acts or omissions for which the Service Provider may be legally responsible, with a deductible not to exceed \$50,000 without prior written approval. The Service Provider shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.
- B. In addition to errors and omissions insurance, the Service Provider shall also secure and maintain, at his/her own expense, insurance which complies with the requirements set forth in Exhibit A to this contract, attached hereto and incorporated as though fully set forth herein.
- E. The above referenced insurance shall be maintained in full force and effect during the life of this Contract and for one year beyond, where specified.

**VIII. Right to Audit**

- A. Service Provider guarantees that the individuals employed by the Service Provider in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. The Service Provider represents that it has completed the I-9 verification process for all individuals the Service Provider has performing services for Municipality. Municipality maintains the right to audit the

Form I-9s for all individuals the Service Provider has performing services for Municipality every six (6) months. Municipality will provide the Service Provider with five (5) days advanced written notice of its intent to perform a Form I-9 audit. In response to Municipality's audit request, the Service Provider shall provide copies of all Form I-9s and any supporting documentation for all individuals who the Service Provider had performing services for Municipality at any time subsequent to the date upon which Municipality gave notice of the preceding Form I-9 audit.

- B. The Service Provider agrees to indemnify Municipality in accordance with Section VI of the Agreement for any issue arising out of the Service Provider's hiring or retention of any individual who is not authorized to work in the United States.

**IX. Taxes.**

- A. Service Provider has the following identification number for income tax purposes: **43-2003973.**
- B. Service Provider is subject to and responsible for all applicable federal, state, and local taxes.
- C. Municipality represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request.

- X. **Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

- XI. **Entire Agreement / Amendment.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Illinois.

**XII. Discrimination.**

- A. To the extent the following applies, Service Provider shall reasonably comply with all federal, state and local laws, rules and regulations applicable to the work including without limitation the requirements of the Equal Employment Opportunity Clause of the Illinois Human Rights Act, (775 ILCS 5/2-105), the rules and regulations of the Illinois Department of Human Rights, and all laws and regulations pertaining to occupational and work safety. Service Provider's signature on this document herein certifies that it had a sexual harassment policy in effect that complies with 775 ILCS 5/2-105.
- B. In the event of Service Provider's non-compliance with the provisions of the foregoing Equal Employment Opportunity Clause, the Illinois Human Rights Act, or the rules and regulations of the Illinois Department of Human Rights, Service Provider may be declared ineligible for future contracts or subcontracts and this Agreement may be canceled and voided in whole or in part and such other sanctions or other penalties may be imposed as provided by statute or regulation. However, any forbearance or delay by the Municipality in canceling this contract shall not be construed as and does not

constitute the Municipality's consent to such a violation or the Municipality's waiver of any rights it may have.

- C. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of Service Provider.

### **XIII. Confidential and Proprietary Information.**

- A. Notwithstanding anything to the contrary set forth herein, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature. The Parties agree that any information disclosed by a Party and designated as proprietary and confidential shall only be disclosed to those officials, employees, representatives, and agents of the other Party that have a need to know in order to administer and enforce this Agreement. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to a Party's corporate structure and affiliates, marketing plans, financial information, or other information that is reasonably determined by a Party to be competitively sensitive. A Party may make proprietary or confidential information available for inspection but not copying or removal by the other Party's representatives. Compliance by the Municipality with the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. ("Illinois FOIA"), including compliance with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois FOIA, or with a decision or order of a court with jurisdiction over the Municipality, shall not be a violation of this Section and Municipality shall have no duty to litigate or defend any action against it under the Illinois FOIA.
- B. Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than the Service Provider's confidential information, will be and remain the sole property of the Municipality. The Service Provider must promptly deliver all Data to the Municipality at the Municipality's request. The Service Provider is responsible for the care and protection of the Data until that delivery. The Service Provider may retain one copy of the Data for the Service Provider's records subject to the Service Provider's continued compliance with the provisions of this Contract.
- C. Limitations on customer information. Both Parties acknowledge and agree that the customer information is subject to, and must be maintained in compliance with, the limitations on disclosure of the customer information established by the Act, including without limitation Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH, and the provisions of the applicable utility tariff. Municipality agrees that customer-specific information provided to the Municipality in accordance with the provisions of the applicable tariff shall be treated as confidential, subject to the Illinois FOIA. To protect the confidentiality of customer information:
  - 1. Service Provider access to customer information is limited those authorized representatives of Service Provider, or any third party, who have a need to know the information for purposes of this Contract.

2. Service Provider warrants that it will not disclose, use, sell, or provide Customer Information to any person, firm or entity for any purpose outside of the aggregation program.

3. Service Provider and Municipality acknowledge that customer information remains the property of the Municipality and that material breaches of confidentiality will prohibit Service Provider from placing any new bids to the Municipality's subsequent Request(s) for qualifications for a period of one year after termination of this Agreement.

D. **Proprietary Rights, Survival.** Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information. The obligations under this Article Nine shall survive the conclusion or termination of this Agreement for two (2) years.

**XIV. Governing Law/Venue.** Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of Illinois, in any court of competent jurisdiction in county in which the Municipality is principally located.

**XV. Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

**XVI. Paragraph Headings.** Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

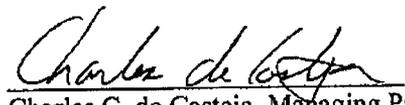
[signatures appear on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 3<sup>d</sup> day of September, 2013.

City of Urbana

BY: 

GOOD ENERGY, L.P.

BY:   
Charles C. de Casteja, Managing Partner