

AMENDMENT TO THE SERVICES AGREEMENT

This Amendment to the Services Agreement, by and between the City of Peoria, Illinois, a municipal corporation, and Good Energy, L.P., with offices located at 232 Madison Avenue, New York, NY 10016 (collectively, the “Parties”) is hereby entered into as of _____, 2015.

WHEREAS, the Parties entered into a Services Agreement (the “Agreement”) on December 11, 2011, and

WHEREAS, the original term of the Agreement has expired.

WHEREAS, the Parties desire to renew and extend the Agreement under the same terms and conditions contained therein; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Agreement, and other good and valuable consideration given and received, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Agreement shall be automatically renewed and extended on its original terms and conditions upon each occasion when the City enters into or renews an electricity supply contract for its Municipal Electricity Opt-Out Aggregation Program. The Agreement shall automatically be renewed and extended for a term equal to that of the term of the electricity supply contract entered into or renewed by the City.
2. This Amendment binds the Parties and their successors or assigns.
3. This document, including the attached original Agreement, constitutes the entire agreement between the Parties, superseding any prior understandings, arrangements or agreements whether in writing or oral.
4. All other terms, conditions, and provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the dates set forth below, to be effective as of the date first set forth above

GOOD ENERGY, L.P.
By: Good Offices Technology Partners, LLC,
General Partner

City of Peoria

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

SERVICES AGREEMENT

Professional Energy Consulting Services

This Services Agreement ("Agreement") is made and entered into and effective on this 15th day of November, 2011 ("Effective Date") by and between the City of Peoria, Illinois ("Peoria"), an Illinois Municipal Corporation, with offices located at 419 Fulton Street, Peoria, Illinois 61602 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, Peoria desires to engage Service Provider to perform electricity consultancy services and procurement for City of Peoria residential and small commercial electric accounts.

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

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

Provisions

- I. Performance of the Services.** Provider shall:
- A. Provide the following services:
 - 1. Electricity Residential opt-out consulting services
 - 2. Marketing services for opt-out electricity aggregation program and associates costs to perform awareness campaign
 - 3. Coordinating efforts with the Illinois Commerce Commission
 - 4. Attending public hearings with the City and other municipal partners
 - 5. Bid creation and execution with multiple electricity suppliers with final selection of an electric supplier being decided by Peoria
 - 6. Negotiating fees for the City with winning suppliers in an amount equal to or greater than the rate negotiated for Good Energy, L.P.
 - 7. After purchase program delivery and on-going daily monitoring,
 - B. Give prompt notice to Peoria should the Service Provider observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the electricity sale and purchase agreement.
 - C. Remit to Peoria 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.
- II. Obligations of Peoria.** Peoria shall:

- A. Assist the Service Provider by placing at its disposal all available information pertinent to the Services for the project.
- B. Use its best efforts to secure release of other data applicable to the project held by others.
- C. Make all necessary provisions to enter upon public and private property as required to perform the Services.
- D. Give prompt notice to the Service Provider should Peoria observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.
- E. Pass an ordinance to put the opt-out referendum on the ballot at the next election.

III. Term and Termination. The Agreement shall commence on the 15th day of November, 2011 and shall terminate on the 31st day of August, 2014, or as otherwise mutually agreed to by Peoria and the Service Provider. Peoria 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 Peoria prior to its natural expiration, Service Provider shall be paid the term of electricity purchased through the residential small commercial opt-out contract by the current alternative supplier.

IV. Payment.

Peoria 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.

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 Peoria. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Peoria 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 and save Peoria, 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 Peoria, 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 against, 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.

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 himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the Service Provider may be legally negligent. 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 for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
- C. The Service Provider shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- D. The Service Provider shall secure and maintain, at his/her/its own expense, Property insurance for protection from claims or damages because of damage to or destruction of property including loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars (\$500,000.00). Peoria shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Contract.
- 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. Certificates showing that the Service Provider is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Peoria prior to the start of work on the project and before Peoria is obligated to make any payments to the Service Provider for the work performed under the provision of this contract. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Peoria is an "Additional Insured".

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 Peoria. Peoria maintains the right to audit the Form I-9s for all individuals the Service Provider has performing services for Peoria every six (6) months. Peoria 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 Peoria'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 Peoria at any time subsequent to the date upon which Peoria gave notice of the preceding Form I-9 audit.

- B. The Service Provider agrees to indemnify Peoria 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. Peoria represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request. Service Provider hereby further agrees to withhold all municipal income taxes due or payable under the provisions of the Codified Ordinances of Peoria, Illinois, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.

- 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. No discrimination for reason of race, religion, sex, age or country of national origin shall be permitted or authorized by Peoria and/or Service Provider in connection with the Services.

B. 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. 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 Peoria County, Illinois.


XIV. 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.

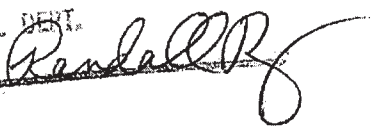
XV. Paragraph Headings. Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

[signatures appear on following page]

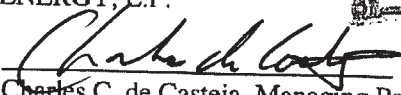
IN WITNESS WHEREOF, the parties have executed this Agreement as of the 11th day of December, 2011.

CITY OF PEORIA, ILLINOIS

BY: 
Patrick Urich, City Manager

APPROVED
LEGAL DEPT.
BY: 

GOOD ENERGY, L.P.

BY: 
Charles C. de Casteja, Managing Partner