

SERVICES AGREEMENT

Professional Energy Consulting Services to a Governmental Aggregator

4th This Services Agreement ("Agreement") is made and entered into and effective on this March 2020 day of March 2020 ("Effective Date") by and between the **City of Central Falls** ("City"), a Rhode Island municipality, with administrative offices located at 580 Broad Street, Central Falls, RI 02863, and **Good Energy, L.P.** ("Good Energy"), located at 232 Madison Avenue, Third Floor, New York, N.Y. 10016.

Recitals

WHEREAS, City is seeking to become a "Governmental Aggregator," as described in Rhode Island General Laws §39-3-1.2, in order to facilitate the provision of electric power services and related energy services, either separately or bundled, for use by residential and non-residential customers within the City's geographic boundaries; and

WHEREAS, City desires to engage Good Energy to perform professional consulting services for City in relation to the creation, authorization, implementation and management of its community electricity aggregation plan (the "Program"), as defined by, and in compliance with, all applicable provisions of R.I.G.L. §39-3-1.2 and other applicable statutes, regulations and precedent; and

WHEREAS, Good Energy desires to perform the Services as defined in this Agreement, and desires to be so engaged.

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

Provisions

- I. **Performance of the Services.** Good Energy shall perform each of the following activities and services, including all services reasonably inferable from those listed below (collectively, the "Services") with reasonable care and in accordance with the best practices established for electrical aggregation program consulting services:
 - A. Provide the following services:
 1. Assist the City in the preparation of a community electricity aggregation plan (the "Plan") in consultation with the City, including the following issues, as applicable:
 - Overview of process and consequences of aggregation.
 - Classes of customers that may participate.
 - Program organizational structure.
 - Program operations.
 - Program funding.

- Rate setting and cost allocation among participants.
 - Entering and terminating agreements.
 - Rights and responsibilities of program participants.
 - Extension or termination of program.
 - Renewable energy content and sourcing.
2. Assist the City with presenting the Plan to the community for comments, revising the Plan as needed, and presenting the Plan and the comments received to the City Council and other key decision-makers for review and/or approval;
 3. Lead and assist with all required consultations and filings with the Rhode Island Public Utilities Commission in regard to the Plan;
 4. Assist the City in the preparation, launch and on-going management of a community electricity aggregation program, consistent with its Plan as determined by the City;
 5. Coordinate the provision of an agreement between the applicable public utility (“Electric Distribution Company” or “EDC,” as defined in R.I.G.L. § 39-1-2) and the City, if required, and coordinate and facilitate communications between the EDC and City, including the confidential exchange of customer information and other information between the EDC and the City;
 6. Develop the contract terms and conditions for the Electric Service Agreement (“ESA”) between City and the recommended successful competitive supplier(s) and any required customer notifications consistent with the approved Plan. Assist with negotiations of an Electric Service Agreement with the selected licensed competitive supplier, to the extent permitted by law;
 7. Provide City with information on electric power pricing, market trends and any other relevant information to support Good Energy’s recommendation for timing of Request for Proposals (“RFP”) for electric service. Prepare bid specifications and procure competitive bids from licensed, competitive suppliers for electric service. Assist in analysis of bids to determine most advantageous proposal based on price and other factors, with final decision of bid date and final selection of a competitive supplier(s) being decided by the City;
 8. Engage expert partners to provide analysis of Class I Renewable Energy Credit (“REC”) market and assist City in determining how to source RECs for its default and optional products. Assist City, along with Good Energy’s expert partners, with development and implementation of strategies or programs to support the development of new clean energy resources which may include, but are not limited to, issuing bids for RECs, negotiating contracts with renewable energy brokers or developers, or developing contract terms and conditions for investments in renewable energy projects with renewable energy brokers and developers. Such assistance shall include identification of any regulatory requirements and preparation of any related regulatory filings or submissions;

9. Manage a comprehensive marketing, education and public outreach program for the launch and ongoing operation of the aggregation plan, at no cost to, and with approval of, the City;
 10. Provide customer "opt-out" consulting services, including but not limited to preparation and management of opt-out notices to be sent to utility customers for the adoption of a municipal authorization of the proposed community electricity aggregation Program and of the customer's right to decline to participate in the Program, determining the validity and accuracy of the eligible customer lists provided by the EDC, and supervision of all other notices and publications required to facilitate the adoption and operation of the Program;
 11. Assist the City in the operation of its community electricity aggregation program, including conducting regular sweeps to offer program services to new or eligible customers; preparing and mailing of opt-out notices; and enrollment of new customers. To the extent possible, Good Energy will help to manage the relationship between the City and the competitive supplier and work to resolve any issues to ensure the efficient and effective operation of the community electricity aggregation plan;
 12. In the event any dispute arises under the ESA, Good Energy shall assist the City in assessing the dispute and responding to any claims consistent with the requirements of the ESA, including negotiating an amendment to the ESA, if warranted. If the City and Competitive Supplier are unable to resolve the matter and initiate formal dispute resolution provisions or seek other legal remedies, Good Energy will provide technical assistance to the City. City acknowledges that Good Energy is not a party to the ESA and that it will be the responsibility of the City to retain independent legal representation in the event of a formal dispute or litigation;
 13. Monitor developments in the wholesale markets and pricing trends and assist in development of a competitive market for energy supply, including providing marketing and education to attract new wholesale suppliers for community electricity aggregation programs;
 14. Assist City with the development of an opt-up or green-up program to educate consumers and encourage program participants to elect optional products to support the development of new clean energy resources, and work with City and expert partners to develop new, innovative green-up products; and
 15. Provide access for a designated Municipal official to Good Energy's data portal to measure program performance. Produce annual report on program performance including key metrics as determined by the City.
- B. Give prompt notice to City should Good Energy acquire knowledge of any fault or deficit in the Program or any nonconformance with the ESA.

- C. Remit to City after the termination of this Agreement, all files and documents pertaining to the project that have been created, 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.
- E. Good Energy shall not subcontract any Services to any person or entity that is not named in this Agreement without the advance written consent of City, which consent shall not be unreasonably withheld. Any subcontractors shall be experienced and qualified and, to the extent required by law, licensed. In the event the Services of a sub-consultant are approved, Good Energy shall submit copies of any and all licenses and registrations to the City. Notwithstanding the foregoing, any approval or lack of objection of the City to any sub-consultant shall not relieve Good Energy of its responsibility for all Services.

II. Obligations of City.

City shall:

- A. Obtain, with the cooperation and assistance of Good Energy, all required authorizations: (i) to initiate aggregation of electric load and adopt an aggregation plan pursuant to R.I.G.L. § 39-3-1.2; (ii) to enter into this Services Agreement; and (iii) to enter into an ESA (s) with a competitive supplier(s).
- B. Use reasonable efforts to secure release of data applicable to the Program held by others, including but not limited to residential and non-residential customer account and load information.
- C. Give prompt notice to Good Energy should City acquire knowledge of any material fault or material deficit in the Program or any nonconformance with the ESA, provided that this provision does not impose upon City any affirmative duty to inquire of any such fault or deficit, and provided further that the failure of City to provide such notice shall not relieve Good Energy of its obligations under this Agreement.
- D. Reasonably cooperate in the development of the Plan and all required regulatory consultations, filings and proceedings.
- E. Reasonably assist Good Energy by placing at its disposal all public information necessary for performance of the services for the project, upon reasonable request by Good Energy.
- F. Nothing in this Agreement shall be construed to require the City to approve an ESA with a competitive supplier.

- III. Term and Termination.** The Agreement shall commence on the Effective Date and shall continue through the full term, or any extension or early termination, of any ESA(s) between the City and a competitive supplier entered into during the term of this Agreement, or as otherwise mutually agreed to by City and Good Energy. City may terminate this Agreement at any time by giving Good Energy thirty (30) days' advance written notice. In the event this Agreement is terminated by City prior to expiration of the current ESA(s), except for termination due to a material default of Good Energy, Good Energy shall be paid the fee included for Good Energy in the ESA for the volume of electricity purchased for the Program by the current competitive supplier(s) from the date of the termination of this Agreement through the expiration of the current ESA(s), including fees related to volumes of electricity purchased during the term of the ESA but billed and paid after the expiration of the ESA, provided that nothing in this Agreement prevents City from terminating, without penalty or liability under this Agreement, any ESA in accordance with the terms of such agreement or as allowed by law.
- IV. Payment.** Subject to the City's termination rights described in Section III, City agrees that Good Energy's fees will be paid by the selected competitive supplier per kWh (volumetrically) for electricity purchased for the duration of the ESA, which fee shall be \$1.00/MWh. In the event the City elects not to proceed with the Program, Good Energy shall not receive a fee.
- V. Relationship of the Parties.** The parties acknowledge and agree that Good Energy is an independent contractor and is not an agent or employee of City. Neither Good Energy nor any of its officers, agents, employees, representatives or subcontractors shall be considered an employee, direct or indirect, of the City within the meaning of any federal, state or local law or regulation, including but not limited to, laws or regulations covering unemployment insurance, workers compensation, industrial accidents, employee rights and benefits, wages and taxes. Nothing in this Agreement shall be construed to create a relationship between Good Energy and City of a partnership, association, or joint venture.
- VI. Indemnification.**
- A. Professional Liability.** Relative to any and all claims, losses, damages, liability and cost, Good Energy agrees to indemnify, defend and save City, 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 Good Energy or its employees.
- B. Non-Professional Liability (General Liability).** To the fullest extent permitted by law, Good Energy shall indemnify, defend and hold harmless the City, and its officers, officials, and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of Good Energy, provided that such claim, damage, loss or expense 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 in whole or in part by the acts or omissions of Good Energy, its agents, or anyone directly employed by it or anyone for whose acts it may be responsible, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified under this Agreement. 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.

- C. The indemnification provisions above are in addition to, and not in limitation of, any other rights and remedies available to the City under this Agreement, at law, and in equity.

VII. Insurance.

- A. Good Energy shall secure and maintain, at 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 Good Energy may be legally responsible. Good Energy shall maintain said coverage for the entire Agreement period and for a minimum of one year after completion of the work under the Agreement or the expiration of the Agreement, whichever is later.
- B. In addition to errors and omissions insurance, Good Energy shall also secure and maintain, at its own expense, insurance as set forth in the Certificate of Liability Insurance of Good Energy.
- C. All of the above referenced insurance shall be maintained in full force and effect during the life of this Agreement, and for one year beyond where specified.
- D. Good Energy agrees to require any consultant or sub-consultant providing services under this Agreement to maintain insurance of the type and amounts provided in this section.

VIII. Right to Audit.

- A. Good Energy represents that the individuals employed by Good Energy in any capacity, including, but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. Good Energy represents and warrants that it has completed the I-9 verification process for all individuals and warrants that it has completed the I-9 verification process for all individuals Good Energy has performing services for City. City maintains the right to audit the Form I-9s for all individuals Good Energy has performing services for City. City will provide Good Energy with five (5) days advanced written notice of its intent to perform a Form I-9 audit. In response to City's audit request, Good Energy shall provide copies of all Form I-9s and any supporting documentation for all individuals who Good Energy had performing services for City at any time subsequent to the date upon which City gave notice of the preceding Form I-9 audit. Notwithstanding the foregoing, neither the performance nor lack of performance of any audit by the City, nor any failure of the City to share the results of any such audit with Good Energy, shall relieve Good Energy of its obligations under this provision.

- B. Good Energy agrees to indemnify, defend and hold harmless City in accordance with Section VI of the Agreement for any issue arising out of Good Energy's hiring or retention of any individual who is not authorized to work in the United States.
- C. Good Energy agrees to require any consultant or sub-consultant providing services under this Agreement to represent and warrant that any of its employees, subcontractors, agents and independent contractors are authorized to work in the United States and that it has completed the I-9 verification process for all individuals performing services under this Agreement. In addition, Good Energy shall cause any consultant or sub-consultant to indemnify, defend and hold harmless City in accordance with Section VI of the Agreement for any issue arising out of such consultant's or sub-consultant's hiring or retention of any individual who is not authorized to work in the United States.

IX. Taxes and Certifications.

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

X. Assignment. Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment, which consent shall not be unreasonably withheld.

XI. Entire Agreement / Amendment. This Agreement constitutes the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by the duly authorized representatives of both parties in accordance with the laws of the State of Rhode Island and Providence Plantations.

XII. Discrimination. To the extent the following applies, Good Energy shall reasonably comply with all federal, state and local laws, rules and regulations applicable to the work including without limitation the requirements of R.I.G.L. § 28-5-1 *et Seq.*, Title VII of the Civil Rights Act of 1964, Title 11 of the American with Disabilities Act of 1990, and any and all rules, waivers, regulatory guidance and regulations promulgated by the Rhode Island Division of Public Utilities or the Public Utilities Commission.

XIII. Confidential and Proprietary Information.

- A. Notwithstanding anything to the contrary set forth in this Agreement, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature, including trade secrets, pursuant to any applicable statute or regulation. The Parties agree that, except as otherwise provided by law, and subject

to the last sentence of this paragraph, any document disclosed by a Party and conspicuously marked on the face of such document as proprietary and confidential shall only be disclosed to officials, employees, representatives, and agents of either Party. Notwithstanding the foregoing, the good faith efforts of Good Energy or the City to comply with the state Open Meetings and Access to Public Records statutes, or with a decision or order of a court or governmental entity with jurisdiction over the City, shall not be a violation of this Section.

- B. **Ownership of Data and Documents.** All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than Good Energy's confidential proprietary information, will remain the sole property of the City. Good Energy must promptly deliver all Data to the City at the City's request. Good Energy is responsible for the care and protection of the Data until that delivery. Good Energy may retain one copy of the Data for Good Energy's records, subject to Good Energy's continued compliance with the provisions of this Agreement.
- 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 pursuant to applicable laws and regulations. City and Good Energy agree that customer-specific information provided to the City in accordance with the Program and any agreements with the applicable EDC shall be treated as confidential to the extent required by law and any applicable EDC agreement or tariff. To protect the confidentiality of customer information:
1. Good Energy access to customer information is limited to those authorized representatives or duly licensed consultants of Good Energy, or any authorized third party, who have a legal need to know the information for purposes of this Agreement.
 2. Good Energy 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. Good Energy and City acknowledge and agree that customer information remains the property of the City and that material breaches of confidentiality will constitute a default of this Agreement.
- D. **Proprietary Rights, Survival.** The obligations under this Article 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 Rhode Island, in any court of competent jurisdiction. Good Energy agrees to accept service of process by certified mail at the address provided in this Agreement. In the alternative, by agreement of

the parties, any such controversy or claim may be submitted for arbitration within the State of Rhode Island pursuant to the applicable rules of the American Arbitration Association.

XV. Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and the parties shall in good faith negotiate to replace such provision 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.

XVII. Compliance with Laws. Good Energy shall comply with all applicable laws and regulations in the performance of the Services.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF CENTRAL FALLS:

By: 
James A. Diossa
Mayor


By: 
As to Form and Correctness
Matthew Jerzyk
City Solicitor

By: 
Reviewed
Barbara Addison
Director of Finance

Date: 2/28/2020

GOOD ENERGY, L.P.

By: Good Offices Technology Partners, LLC


Signature

Maimie Hower
Printed Name

Manager
Title