

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 2917

AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A PROFESSIONAL ENERGY CONSULTING SERVICES AGREEMENT EMPLOYING GOOD ENERGY, L.P. TO PERFORM MUNICIPAL ELECTRICITY AGGREGATION CONSULTANCY SERVICES FOR THE CITY OF COLUMBIA, ILLINOIS

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 21st day of November, 2011**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 21st day
of November, 2011**

NOV 21 2011


City Clerk

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WHEREAS, the City Council of the City of Columbia, Illinois (“City”) has found and determined and does hereby declare that it is in the City’s best interests and appropriate to employ a firm to perform municipal electricity aggregation consultancy services for the City;

WHEREAS, the City Council of the City has selected Good Energy, L.P., of New York, New York (“Good Energy”) as an appropriate company to provide such services; and

WHEREAS, it is necessary and appropriate that this Ordinance be enacted for the purpose of authorizing the City to enter into a Services Agreement for Professional Energy Consulting Services to be provided to the City by Good Energy (“Services Agreement”).

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois, does hereby authorize the employment of Good Energy to perform municipal electricity aggregation consultancy services for the City, and does further authorize and direct the Mayor to execute and deliver the Services Agreement for Professional Energy Consulting Services, in the form attached hereto, evidencing such employment of Good Energy to perform such municipal electricity aggregation consultancy services, which Services Agreement is hereby approved as to form, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

Section 3. This ordinance shall be in full force and effect following its passage and publication in pamphlet form, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Agne, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Roessler, Huch, Mathews, Piazza
and Reis.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 21st day of November, 2011.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, J. Ronald Colyer, certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois.

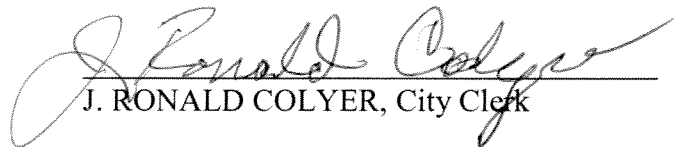
I further certify that on the 21st day of November, 2011, the Corporate Authorities of the City of Columbia, Illinois, passed and approved Ordinance No. 2917 entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A PROFESSIONAL ENERGY CONSULTING SERVICES AGREEMENT EMPLOYING GOOD ENERGY, L.P. TO PERFORM MUNICIPAL ELECTRICITY AGGREGATION CONSULTANCY SERVICES FOR THE CITY OF COLUMBIA, ILLINOIS”

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2917, including the ordinance and a cover sheet thereof, was prepared, and a copy of such ordinance was posted in the Columbia City Hall, commencing on November 22, 2011 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also made available for public inspection upon request in the office of the City Clerk.

DATED at Columbia, Illinois this 21st day of November, 2011.



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

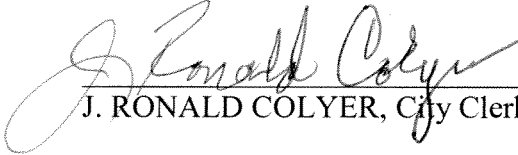
I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois, and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2917, entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A PROFESSIONAL ENERGY CONSULTING SERVICES AGREEMENT EMPLOYING GOOD ENERGY, L.P. TO PERFORM MUNICIPAL ELECTRICITY AGGREGATION CONSULTANCY SERVICES FOR THE CITY OF COLUMBIA, ILLINOIS”

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois, City Council held on the 21st day of November, 2011.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 21st day of November, 2011.



J. RONALD COLYER, City Clerk

(SEAL)

SERVICES AGREEMENT

Professional Energy Consulting Services

This Services Agreement ("Agreement" or "Contract") is made and entered into and is effective on this _____ day of _____, 2011 ("Effective Date") by and between the City of Columbia, Illinois ("Columbia" or "City"), an Illinois Municipal Corporation, with offices located at 208 South Rapp, Columbia, IL 62236 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, Columbia desires to engage Service Provider to perform electricity consultancy services and procurement for Columbia residential and small commercial electric accounts.

WHEREAS, Service 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.** Service Provider shall:
- A. Provide the following services:
 - 1. Electricity Residential and Small Commercial Accounts opt-out consulting services
 - 2. Marketing services for opt-out electricity aggregation program and associated costs to conduct an 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 Columbia
 - 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 Columbia should the Service Provider observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the electricity sale & purchase agreement.
 - C. Remit to Columbia 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 Columbia. Columbia 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 project held by others.
- C. Give prompt notice to the Service Provider should Columbia observe or otherwise become aware of any fault or deficit in the project or any nonconformance with this Agreement.
- D. Consider passage of the proper documentation to place the opt out referendum question on the ballot at the next election.

III. Term and Termination. This Agreement shall commence on the _____ day of _____, 2011 and shall terminate on the 30th day of September, 2014, or as otherwise mutually agreed to by Columbia and the Service Provider. Columbia 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 Columbia prior to its natural expiration, Service Provider shall be paid by the selected electricity supplier for the full term that electricity is purchased through the City's residential/small commercial opt-out contract with such (alternative) electricity supplier.

IV. Payment.

Columbia 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 with the selected electricity supplier – in no event will fees be due Service Provider by City. Such fees will be consistent with those fees paid for other nearby municipalities.

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 Columbia. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Columbia 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 Columbia, 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 Columbia, 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 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 the Service Provider, any subconsultant(s) of the Service Provider, its agent(s), 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 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, 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 this Contract.
- B. In addition to errors and omissions insurance, the Service Provider shall also secure and maintain, at its 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 such insurance prescribed by federal, state or local laws, rules, regulations, ordinances, codes or orders.
- C. The Service Provider shall secure and maintain, at its 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 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). Columbia shall be held harmless for any damage to Service Provider's property and/or equipment during the course of performance under this Contract.
- E. The above described 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 described insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Columbia prior to the start of work on the project. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that Columbia 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 will have performing services for Columbia. Columbia maintains the right to audit the Form I-9s for all individuals the Service Provider has performing services for Columbia every six (6) months. Columbia 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 Columbia'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 Columbia at any time subsequent to the date upon which Columbia gave notice of the preceding Form I-9 audit.
- B. The Service Provider agrees to indemnify Columbia in accordance with Section VI of this 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. Columbia 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 the express, written consent from the other party prior to such 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 Columbia and/or Service Provider in connection with the services provided pursuant to this Agreement.

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 Monroe 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 _____ day of _____, 2011.

CITY OF COLUMBIA, ILLINOIS

BY: _____
Kevin B. Hutchinson, Mayor

ATTEST:

J. Ronald Colyer, City Clerk

GOOD ENERGY, L.P.

BY: _____
Charles C. de Casteja, Managing Partner