

**AN ORDINANCE APPROVING AN AGREEMENT  
WITH GOOD ENERGY, L.P.**

WHEREAS, the City Council passed and approved Ordinance No. 11-62 providing for the submission to the electors in the City to vote on a referendum question of whether the City should have the authority to arrange for the supply of electricity for its residential customers and small business customers; and

WHEREAS, since the adoption of Ordinance No. 11-62, the City Council has determined that it is in the best interest of the City to retain the consulting services of Good Energy, L.P. to provide consulting services and procurement for Rolling Meadows residential and small commercial retail customers.

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

Section One: The Corporate Authorities of the City of Rolling Meadows have elected to work in collaboration with Good Energy, L.P. who will use its professional expertise, at no cost to the City, to develop a Plan of Operation and Governance, conduct the Request for Proposal process and coordinate with Illinois Commerce Commission, Illinois Power Authority, Attorney General's Office and Commonwealth Edison.

Section Two: The Mayor and City Clerk are hereby authorized and directed to execute and deliver, on behalf of the City of Rolling Meadows, a Services Agreement with Good Energy, L.P., a copy of which is attached hereto as Exhibit "A".

Section Three: This Ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

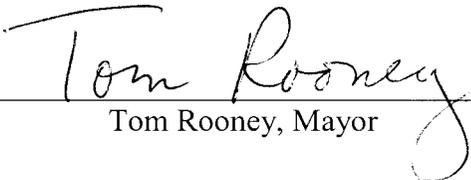
AYES: Allen, Judd, Banger, D'Astice, Larsen

NAYS: 0

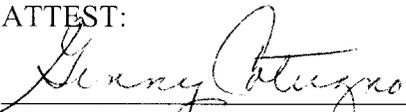
ABSENT: Cannon, Buske

Passed this 14<sup>th</sup> day of February 2012.

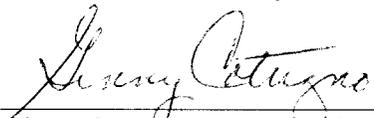
Approved this 14<sup>th</sup> day of February 2012.

  
\_\_\_\_\_  
Tom Rooney, Mayor

ATTEST:

  
\_\_\_\_\_  
Ginny Cotugno, Deputy City Clerk

Published this 15<sup>th</sup> day of February 2012.

  
\_\_\_\_\_  
Ginny Cotugno, Deputy City Clerk

## SERVICES AGREEMENT

### **Professional Energy Consulting Services**

This Services Agreement ("Agreement") is made and entered into and effective on this 14<sup>th</sup> day of February, 2012 ("Effective Date") by and between the City of Rolling Meadows ("Rolling Meadows"), an Illinois Municipal Corporation, with offices located at 3600 Kirchoff Road, Rolling Meadows, IL 60008 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, Rolling Meadows desires to engage Service Provider to perform electricity consultancy services and procurement for Rolling Meadows 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 amount and sufficiency of which consideration is hereby acknowledged, 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 associated costs to perform awareness campaign, which complies with Article VIII, Section 1(a) of the Illinois Constitution and 5 ILCS 5/9-25.1(b);
    - 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 Rolling Meadows;
    - 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.; and
    - 7. After purchase program delivery and on-going daily monitoring.
  - B. Give prompt notice to Rolling Meadows 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 Rolling Meadows 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 the Constitution and all statutes, ordinances, laws, rules and regulations which may be applicable to the services provided hereunder. Service Provider represents and warrants that it is not barred, prohibited or ineligible to enter into this Agreement and/or provide the services herein provided by virtue of any Federal or Illinois statute, ordinance, law, rules or regulations.

**II. Obligations of Rolling Meadows.** Rolling Meadows 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 Rolling Meadows observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

**III. Term and Termination.** The Agreement shall commence on the date first above written and shall terminate on the 30th day of September, 2014, or as otherwise mutually agreed to by Rolling Meadows and the Service Provider. Rolling Meadows 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 Rolling Meadows prior to September 30, 2014, and provided Service Provider is not in default, Service Provider shall be paid during the term hereof, its fees for the electricity purchased through the residential small commercial opt-out contract by the current alternative supplier.

**IV. Payment.**

Rolling Meadows 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 no greater than 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 Rolling Meadows. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Rolling Meadows 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 Rolling Meadows, 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, or agents, or its subconsultants.

- B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless Rolling Meadows, 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 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 liable. The Service Provider shall maintain said coverage for the entire contract period and for a minimum of two years after the termination of this Agreement.
- 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 person 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 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). Rolling Meadows shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Agreement.
- E. The above referenced insurance shall be maintained in full force and effect during the term of this Agreement and for two years after the termination of the Agreement. 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, Rolling Meadows 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 Rolling Meadows is an "Additional Insured" and shall contain an endorsement that Rolling Meadows shall be provided thirty (30) days advance written notice prior to the cancellation or reduction of the amount of any coverage contained in the Certificate of Insurance.

### **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 Rolling Meadows. Rolling Meadows maintains the right to audit the Form I-9s for all individuals the Service Provider has performing services for Rolling Meadows every six (6) months. Rolling Meadows 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 Rolling Meadows'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 Rolling Meadows at any time subsequent to the date upon which Rolling Meadows gave notice of the preceding Form I-9 audit.
- B. The Service Provider agrees to indemnify Rolling Meadows 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. Rolling Meadows 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. No discrimination for reason of any protected class as set forth in the Rolling Meadows Code of Ordinances shall be permitted or authorized by Rolling Meadows 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 or equitable 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 governed by and construed by the applicable laws of the State of Illinois, in any court of competent jurisdiction in Cook 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 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.
- XVI. Survival.** The provisions set forth in Sections I, VI, VII, VIII and XII shall survive the termination of this Agreement.
- XVII. Attorneys Fees and Costs.** In the event that either party should commence litigation to enforce the terms of this Agreement, including without termination forfeiture, specific performance, or any claim for damages caused by the default of a party, and/or in defending any proceeding to which Buyer or Seller is made a party to any legal proceeding as a result of the acts or omissions of the other party, the prevailing party shall be entitled to its reasonable costs and attorney's fees from the non-prevailing party.
- XVIII. Waiver.** The waiver by either party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition of the Agreement.
- XIX. Binding Effect.** This Agreement shall be binding upon Parties and their respective successors and assigns.
- XX. Notices.** Any notice of communication required or desirable under this Agreement shall be in writing and shall be deemed sufficiently given only if delivered in person or sent by telegram or certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

**If to City:**

City of Rolling Meadows  
3600 Kirchoff Road  
Rolling Meadows, IL 60008  
Attn: City Manager

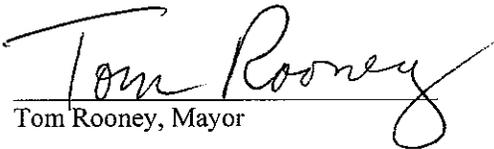
**If to Service Provider:** Good Energy, L.P.  
232 Madison Avenue, Suite 405  
New York, New York 10016

or to such other person or address as the person entitled to such notice or communication may have specified in a notice duly given by the sender as provided herein. Such notice or communication shall be deemed to have been given as of the date so delivered, transmitted, or mailed.

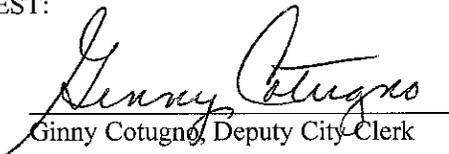
[signatures appear on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of February, 2012.

ROLLING MEADOWS, ILLINOIS

BY:   
Tom Rooney, Mayor

ATTEST:

BY:   
Ginny Cotugno, Deputy City Clerk

GOOD ENERGY, L.P.

BY:   
Javier Barrios, Managing Partner