

MEMORANDUM OF UNDERSTANDING

This memorandum of understanding (“MOU”), dated August 17, 2020, is reached between the City of Columbus, Ohio (“City”) and the Selected Preferred Electric Supplier, AEP Energy, Inc. (“Supplier”) (collectively, “Parties” or, individually, “Party”), for the supply of electric service to serve the City’s opt-out retail electric Community Choice Aggregation program for the City’s residents and small businesses in the incorporated areas of the City of Columbus served with distribution service by AEP Ohio (“Program”) consistent with R.C. 4928.20.

PURPOSE

The purpose of this MOU is to outline the preliminary agreement between the City and Supplier for the purpose of establishing and implementing a successful Program for the City’s residents and small businesses in the incorporated areas of the City of Columbus served with distribution service by AEP Ohio that, unless mutually agreed upon in writing otherwise, is in a manner consistent with the concepts contained within the Supplier’s Response to the City’s Request for Statement of Qualifications/Request for Preferred Supplier, dated July 6, 2020 (the “Response”) and that will satisfy the City’s following goals: 1) provide competitive retail energy supply costs for Columbus citizens and small businesses; 2) support renewable energy development, especially local renewable energy generation, and energy savings via efficiency programs, and advance Columbus’ sustainable energy economy; and 3) to ensure that the selected energy Supplier provides quality, reliable service and first-rate customer service.

BACKGROUND

The Ohio Legislature enacted electric deregulation legislation (“Am. Sub. S.B. No. 3”), which authorized the legislative authorities of municipal corporations, townships, and unincorporated areas of the county, to aggregate the retail electrical loads located within the respective jurisdictions and to enter into service agreements to facilitate for those loads the purchase and sale of electricity. Legislative authorities may exercise said authority individually or jointly with any other legislative authorities. Governmental aggregation provides an opportunity for residential and small business (defined by an annual energy use of 700,000 kWh or less and not part of a national account) consumers to participate collectively in the potential benefits of electricity deregulation, which include, but are not limited to, competitive electricity rates, increased consumer choice, an increased demand for renewable energy to help grow the industry, and a 100% renewable energy supply. It would be in the best interest of the City of Columbus and its residents and small businesses to have the opportunity to participate in this Program.

At the 2020 State of the City, Mayor Andrew J. Ginther announced the City’s intention to pursue Community Choice Aggregation, and committed the City to an aggregation program with a 100% renewable energy supply by 2022 that satisfies the above-stated goals. The City is also committed to a Program that supports sustainability efforts, energy efficiency, and other policy priorities of the City that benefit the Columbus community. Additionally, the City has a community-wide goal to be carbon neutral by 2050, aligning with global efforts to combat climate change and limit global temperature rise by 1.5 degrees Celsius, and is committed to emissions reduction efforts, energy efficiency, and renewable energy development to help meet these goals.

MATERIAL TERMS OF AGREEMENT

The City and the Supplier hereby agree to the following terms:

1. As voter approval is required by law, the City shall place the opt-out electric Program on the November 3, 2020 (the “November 3, 2020 Election Date”) ballot for voter approval.
2. Supplier shall support the City’s public education and outreach efforts to gain community support of the Program in advance of the November 3, 2020 ballot initiative that the City’s residents will vote upon and provide \$1,500,000 funding to the educational and outreach efforts (the “Funding”).
 - a. Such Funding shall be provided to Clean Columbus, a municipal ballot issue committee (the “Committee”). The Parties agree to cooperate to ensure that the Committee fulfills the requirements set forth in this Section 2.
 - b. All contributions to and expenditures by the Committee shall be publicly reported as required by applicable local, state or federal laws; provided that, in addition to such laws, the Committee shall establish and maintain a public webpage that discloses, on a weekly basis, all contributions received by the Committee.
 - c. Subject to the conditions in Sections 2(d) and 2(e), such Funding shall be provided in a series of no more than three equal installment(s) (each, an “Installment”).
 - i. The first Installment shall be paid within 10 days of the execution date of this MOU, subject to the Committee’s prior satisfactory fulfillment of Supplier’s due diligence investigation with reasonable access to such information and individuals as Supplier may reasonably request to carry out Supplier’s due diligence investigation and/or reporting or approval requirements.
 - ii. The second Installment shall be made no later than September 4, 2020, and the third Installment shall be made no later than October 2, 2020; provided that such Installments shall be made subject to Section (2)(e) herein.
 - d. The Committee shall make available to the Supplier, on a weekly basis, reports from the Committee Treasurer regarding expenditures and contributions, as well as a projected budget for the remainder of the educational and outreach efforts.
 - e. If the Committee, in consultation with the Supplier, determines any portion of Installments 2 or 3 may not be disbursed for the purposes established herein, such Installment shall be reduced by the amount so determined through mutual agreement of the Committee and the Supplier.
3. Supplier shall work with the City and the City’s Program consultant, Trebel, LLC, (“Consultant”) to develop and implement an opt-out Program that satisfies the City’s goals identified above.
4. Supplier shall work with the City and the City’s Consultant to develop and implement a Program that supports sustainability efforts, energy efficiency, and other policy priorities of the City that benefit the Columbus community.

5. Supplier shall have and maintain through the term of this MOU and a subsequent Master Supply Agreement a valid operating certificate from the Public Utilities Commission of Ohio (“PUCO”) to be a certified Competitive Retail Electric Service provider.
6. Supplier shall comply with Ohio law and the PUCO’s rules and standards for the term of this MOU and the subsequent Master Supply Agreement.
7. The term of this MOU shall commence on the date first set forth above and shall expire and automatically terminate on the earlier of (A) the date of the Parties’ full execution of the finalized Master Supply Agreement after approval by City Council or (B) 11:59 p.m. Eastern on December 31, 2021 (such period from such commencement of this MOU through such date and time being the “Exclusivity Period”).
8. Upon voter approval of the ballot initiative to implement the opt-out electric Program, the City shall adopt an operation and governance plan consistent with O.A.C. 4901:1-21-16.
9. Upon voter approval of the ballot initiative to implement the opt-out electric Program and written notice filed with PUCO, the City shall become a Governmental Aggregator with the PUCO, consistent with R.C. 4928.20 and O.A.C. Chapter 4901:1-24-01.
10. If the ballot initiative on the November 3, 2020 Election Date to implement the opt-out Program fails, the Parties shall cooperate to seek City Council’s approval to place the ballot initiative for the opt-out Program on a subsequent ballot for voter approval before expiration of the Exclusivity Period, and Supplier shall remain the City’s Selected Preferred Electric Supplier (which, for all purposes, means that Supplier shall have sole and exclusive right to supply electricity to the City’s Program) during the Exclusivity Period pursuant to Section 12 herein.
11. As soon as reasonably practicable after the execution of this MOU, the Parties shall commence to negotiate a Master Supply Agreement, and the Parties shall endeavor in good faith to finalize a fully executed written Master Supply Agreement (which, for purpose of all references in this MOU to a Master Supply Agreement, means that the Parties will have mutually agreed upon the terms and conditions set forth therein), subject to voter approval of the ballot initiative to implement the opt-out Program and City Council’s approval and adoption of such Master Supply Agreement.
12. The Parties agree that, at a minimum, AEP Energy will be the City’s Selected Preferred Electric Supplier through the end of the Exclusivity Period.
13. During the term of the Master Supply Agreement and any renewals thereof, if executed, the Supplier shall have the exclusive right to supply electricity to the Program.

14. The Master Supply Agreement shall contain, at a minimum, the following terms and conditions:

- a. Working in cooperation with the City and City's Consultant, a collaborative plan shall be delineated to achieve 100% renewable energy by 2022, consistent with the goals and policies included in this MOU, the Request for Statement of Qualifications, and the concepts contained in the Response unless mutually agreed upon in writing otherwise.
- b. The commencement date for the Program, delivery term, and term of the Master Supply Agreement shall be delineated.
- c. The customers' price and terms for electric service supplied through the Program shall be delineated.
- d. Neither Party shall engage in discrimination against any customer or any employee because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, family or military status, or any other status that is protected by federal, state, or local law or ordinance.
- e. Supplier shall supply quality, reliable electric service to eligible residential and small commercial customers who participate in the opt-out Program to meet the full requirements of each customer's electricity requirements for the term of the Master Supply Agreement and any renewals thereof ("Full Requirements Generation Service").
- f. Residential and small commercial customers shall have the opportunity to opt-out of the Program at least every three years without a fee, and no early termination fees will be assessed to such customers by AEP Energy.
- g. Supplier shall only include in the Program those customers who are eligible to participate in the Program and who have been notified of the terms and conditions of the Program as required by the PUCO's rules.
- h. City, its assigns and agents, shall not knowingly or willfully encourage or attempt to persuade prospective customers to not participate in the Program or opt-out of the Program.
- i. Supplier shall conduct subsequent opt-outs after the initial opt-out in consultation with the City and its Consultant.
- j. Supplier shall allow customers to affirmatively opt-in to the Program at the customer's request at the same price, terms, and conditions of the Program.

- k. Supplier shall not use the Program participants' usage data and customer information for any other marketing purposes without the City's consent and then only in conformity with applicable law.
- l. Supplier shall disclose Program participants' usage and other pertinent data (KW and kWh) to the City's Consultant on a monthly basis in a form acceptable to the City's Consultant.
- m. The Supplier shall execute a Consultant Fee Agreement, concurrently with the execution of the Master Supply Agreement, with the City's Consultant and provide a Fee to City's Consultant of at least \$0.001/kWh, which will be included in the supply pricing in the Master Supply Agreement and any renewals thereof. Said Fee will be payable by the Supplier on a monthly basis through an administrative fee per kilowatt hour and is required for the term of the Master Supply Agreement and any renewals thereof. This Fee will also apply to any new opt-in accounts, including and up to the conclusion of the Master Supply Agreement term and any renewals thereof.
- n. Supplier shall provide a Community Grant to the City of at least \$0.001/kWh. Said Grant will be payable by the Supplier on a monthly basis and is required for the term of the Master Supply Agreement and any renewals thereof. This Grant will also apply to any new opt-in accounts, including and up to the conclusion of the Master Supply Agreement term and any renewals thereof.
- o. The City and/or its Consultant shall request the eligible customer list from AEP Ohio.
- p. Supplier shall be responsible for the costs associated with obtaining the eligible customer list from AEP Ohio.
- q. Supplier shall print and mail opt-out notices to customers appearing on the eligible customer list in accordance with the PUCO's rules and in consultation with the City and City's Consultant.
- r. Supplier shall provide consolidated billing through AEP Ohio for the Full Requirements Generation Service that the Supplier will provide to the Program participants.
- s. Supplier shall maintain local office(s) located within the City of Columbus' corporate limits for the transaction of business, including the receipt of service calls or complaints from customers or the City or the City's Consultant. The office shall be staffed by an employee of the Supplier and reached by dialing a local number or a toll-free number. The office shall be open on normal business days, i.e., Monday through Friday (excluding Federal holidays), from 8:00 a.m. to 5:00 p.m.

- t. Supplier shall provide ongoing world class customer service through the term of the Master Supply Agreement and any renewals thereof and shall have first-rate customer service initiatives, as may be mutually agreed upon, including phone and web capabilities.
 - u. The City and City's Consultant shall have no financial responsibility with respect to the participating customers' obligations under their agreements with Supplier and assume no credit risk for non-payment on behalf of any customer.
 - v. Any change in law provisions in the Master Supply Agreement shall be mutual as the Parties may negotiate.
 - w. Supplier shall carry and maintain commercial liability insurance throughout the term of the Master Supply Agreement and any renewals thereof.
 - x. To the fullest extent of the law and without limitation, Supplier shall protect, indemnify and save harmless the City and all of its respective boards, officers, officials, employees, volunteers, agents, servants, and representatives from and against any damage, cost, or liability, including reasonable attorneys' fees, resulting from any claim by third parties for any or all injuries to persons or damage to property arising from the acts or omissions of AEP Energy, its officers, employees, agents, or subcontractors in providing services under the terms and conditions of the Master Supply Agreement.
 - y. Supplier shall complete the following forms:
 - i. Independent contractor acknowledgement/no contribution to OPERS, which shall only be required to be completed if Supplier is an individual or has fewer than five employees
 - ii. Campaign Finance
 - iii. Non-Collusion Affidavit
15. This MOU shall not be transferred or assigned by either Party without the express written authorization of the other Party, which authorization shall not be unreasonably withheld.
16. Neither Party will be liable to the other Party or its affiliates for consequential, incidental, punitive, exemplary or indirect damages, including lost profits or other business interruption damages, whether in tort, contract, or otherwise, in connection with this MOU.
17. This MOU may be executed in multiple counterparts, each of which is an original and all of which constitute one and same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their fully authorized representatives as of the date indicated below:

City of Columbus

AEP Energy, Inc.

DocuSigned by:
By: Joseph A. Lombardi
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DocuSigned by:
By: Frank Willson
609F867D4AC7444...

Name: Joe Lombardi

Name: Frank C. Willson

Title: Director, Finance Department

Title: Vice President - Residential
& Small Business Solutions

Date: 8/17/2020

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