

RESOLUTION NO.: 42-2023
INTRODUCED BY: Mayor Thomas

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH DYNEGY ENERGY SERVICES, LLC AS THE ELECTRIC SUPPLIER FOR RESIDENTS, SMALL COMMERCIAL ENTITIES, AND OTHER ELECTRIC CONSUMERS ELIGIBLE TO PARTICIPATE IN THE CITY OF RICHMOND HEIGHTS' ELECTRIC AGGREGATION PROGRAM.

WHEREAS, it is in the interest of sound public policy for the City of Richmond Heights to contract with a supplier of electricity for its residents, small commercial entities, and other electric consumers who are members of the City of Richmond Heights' Electric Aggregation Program ("Aggregation Program");

WHEREAS, under Article VI, Section 3 of the Charter of the City of Richmond Heights, the City is authorized to enter into contract for public electric utility service without public bidding;

WHEREAS, the City previously entered into an agreement with Buckeye Energy Brokers, Inc., to render certain consulting services regarding electric energy related matters within the City;

WHEREAS, Buckeye Energy Brokers, Inc. has obtained proposals from public electric utility suppliers for the supply of electricity to the City's members of the Aggregation Program and has recommended that the City enter into a contract with Dynegy Energy Services, LLC, as the City's electric supplier for a one (1)-year contract at a rate of \$0.06730/kWh with a civic grant to the City in the amount of \$30,000 to be paid by September 15, 2023, which recommendation has approved by the Council's Finance Committee;

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor of the City of Richmond Heights is hereby authorized to enter into a one (1)-year contract with Dynegy Energy Services, LLC, substantially in the form of the Master Agreement attached hereto, as the City's electric supplier for members of the City's Aggregation Program at a rate of \$0.06730/kWh with a civic grant payable by the electric supplier to the City in the amount of \$30,000 by September 15, 2023; and upon entering into said contract, a notice will be sent by Dynegy Energy Services, LLC to all eligible electric aggregation members and potential members not under contract informing them of the electric rates, terms and conditions of the Aggregation Program.

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

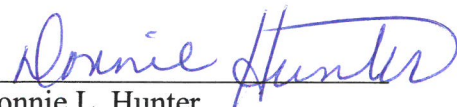
PASSED: March 28, 2023

APPROVED: March 28, 2023

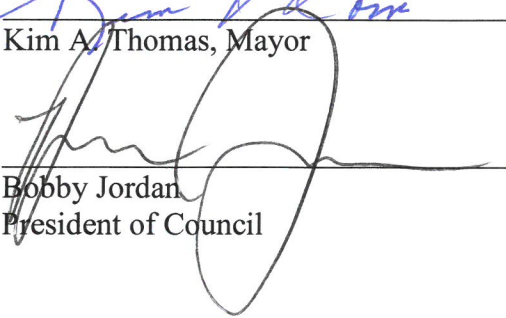


Kim A. Thomas, Mayor

ATTEST:



Donnie L. Hunter
Clerk of Council



Bobby Jordan
President of Council

MASTER AGREEMENT
TO PROVIDE ELECTRIC GENERATION SUPPLY AND RELATED SERVICES
BY AND BETWEEN
CITY OF RICHMOND HEIGHTS (CUYAHOGA COUNTY), OHIO
AND

DYNEGY ENERGY SERVICES (EAST), LLC
D/B/A DYNEGY ENERGY SERVICES, LLC

THIS AGREEMENT ("Agreement") is made this 20th day of March 2023, by and between **City of Richmond Heights (Cuyahoga County), Ohio ("City")** and **Dynegy Energy Services (East), LLC d/b/a Dynegy Energy Services, LLC, ("DESE")** acting by and through properly authorized officials (hereinafter the "City" and DESE may from time to time be referred to as a "Party" and together, as the "Parties").

WHEREAS

1. On August 21, 2001, the City approved an ordinance to establish an "opt-out" electric aggregation program (the "Electric Aggregation Program" or the "Program") pursuant to Ohio Revised Code ("ORC") Section 4928.20, for the residents, businesses, and other electric consumers eligible to participate in the aggregation program (the "Buying Group"), and for that purpose, to take greater control over the electric purchasing decisions for the City and its qualifying residents, with the desire to take advantage of the collective purchasing power of the City for the benefit of the Buying Group.
2. On December 22, 2022, the City was **certified** as a governmental aggregator under Certificate #16-1147E(4).
3. On November 18, 2016, the City was **previously certified** as a governmental aggregator under Certificate #16-1147E(1).
4. The City desires to select and use DESE, during the term of this Agreement, as the exclusive provider of retail electric supply to the members of the Electric Aggregation Program at the pricing mutually agreed to by DESE and the City pursuant to the terms set forth in Section 2 of this Agreement.

5. The "Buying Group" shall consist of all retail electric loads, except mercantile customers, that are located within the City and for which there is a choice of supplier of that service, and who are otherwise eligible to participate in the governmental aggregation program.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, and terms to be kept and performed and the aforementioned recitals, which are incorporated herein by reference, the Parties agree as follows:

SECTION 1 GENERAL PROVISIONS

1.1 Electric Governmental Aggregation Program

City shall take all actions necessary to maintain its certification as a governmental aggregator with the Public Utilities Commission of Ohio ("PUCO") at all times through the term of this Agreement and any extension(s) hereof. City shall not assume the credit risk for any nonpayment on behalf of any Customer (as defined below) in its Electric Aggregation Program.

1.2 DESE

DESE is duly certified by the PUCO as a competitive retail electric service provider and, as such, is authorized to provide such services to serve the City's residential and small commercial customers who do not opt out of the Program.

DESE shall act as an independent contractor to the City, and shall not be deemed an employee or representative of the City.

1.3 Customers

The end users in the City's Electric Aggregation Program will be the residential and small commercial customers within the City's political boundaries that do not opt out of the Program ("Customers") and who are otherwise eligible to participate. On behalf of the Customers, the City reserves the right to approve the supplier's terms and conditions for the supplier's contracts with the Customers.

1.4 Utility

For the purposes of this Agreement, Illuminating Company ("Utility") shall be the electric distribution utility and will provide electric distribution services for all electricity supplied under this Agreement.

1.5 Third Party Consultant

For the purposes of this Agreement, First Energy Advisors ("Consultant") shall be the third party hired by the City to develop, implement, and administer the Program.

The Parties acknowledge that the Retail Power Price for energy as described in Attachment A includes a commission fee equal to \$0.0005 per kWh of Customer's actual usage payable to the Consultant, as set forth in Attachment B.

DESE agrees to include this commission fee in the Retail Power Price for energy and to make the monthly commission on behalf of the Customers, and acknowledges this obligation as a material obligation of this Agreement; provided however, that (i) this Agreement remains in full force and effect; and (ii) the commission fee shall be paid fifteen (15) business days following the end of each month, based on prior month meter readings of each Customer's meter performed by the Utility; and (iii) this Agreement shall not automatically renew without written approval by authorized signatories for each Party. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as provided in this provision, there shall be no other third-party beneficiaries to this Agreement.

SECTION 2 SCOPE OF WORK

The City shall use DESE as the exclusive provider of retail electric supply to the members of the Electric Aggregation Program at the pricing mutually agreed to by DESE and the City pursuant to the terms set forth below. The Parties hereby agree to undertake, perform and complete the services and/or actions described below:

2.1 DESE and the City hereby agree that the rate Customers will pay for electric generation service provided by DESE under the Electric Aggregation Program shall be as set forth in Attachment A hereto ("Billing Rates") and in accordance with Attachment B ("Civic Grant").

2.2 DESE will be responsible for the costs of obtaining the eligible customer list from the Utility and/or from any other resource it deems useful in creation of an accurate list. The City will share its resources to help mitigate the cost of assembling and verifying this list and will request the eligible customer list from the Utility. It will be the joint responsibility of the City and DESE to approve the list to be used. DESE shall perform, and the City will assist, to the best of their abilities, in the necessary list cleansing to ensure that only those Customers who are eligible to participate are included on the list. DESE and the City acknowledge that the list acquired from the Utility is represented by the Utility to be a list properly cleansed to include only those Customers that are eligible for the Government Aggregation, as detailed in ORC Section 4928.20.

To the extent the Utility fails to provide such a list, the Parties hereto expressly waive any claim against each other resulting from such failure by the Utility.

2.3 Upon notification and request to DESE by a Customer who was eligible at the time of the initial opt-out notification and who remains eligible, DESE shall enroll any such Customer wishing to join the Program. If an ineligible customer receives an opt-out notice and is enrolled in the Program, upon knowledge of or notice to DESE, DESE shall take immediate steps to return that customer to their local utility's standard service. DESE will also be responsible for reimbursing any switching fee and negative differential charges resulting from the improper switch, if notified by a customer with a legitimate grievance.

2.4 DESE shall print and mail opt-out notice packets to Customers that appear on the cleansed list. The packet shall contain an opt-out notice scripted by the City, a terms and conditions page outlining Customer contract provisions scripted by DESE and approved by the City, and may also include other information as agreed upon by the City and DESE. DESE shall bear the costs associated with preparing, printing, and mailing the opt-out notice packets.

2.5 DESE shall receive and organize the opt-out responses and prepare a final listing of those Customers to be enrolled in the program. DESE will also handle the information sharing/verification process with ("Utility") for the transfer of accounts.

2.6 DESE will utilize its customer call center resources to handle customer calls and concerns. DESE maintains a toll-free telephone number that will be provided in all written correspondence with Customers, as well as the DESE website that can be used by Customers to get answers to frequently asked questions. DESE understands that the City is not equipped to handle large volumes of customer calls and will be dependent on DESE for this function. The City will remain available to answer questions regarding customer inquiries as needed by DESE.

2.7 Once timing is finalized between the City and DESE, DESE will conduct an initial opt-out opportunity (the "Initial Opt-out"). Thereafter, no new Customer will be enrolled in the aggregation until a subsequent offering, at the City's discretion ("Interim Opt-outs") is conducted. DESE will provide the services set forth in Sections 2.2 through this 2.7 with respect to an Interim Opt-out, as it did for the Initial Opt-out. The purpose of the Interim Opt-outs is to provide an opportunity for newly-eligible Customers (by way of example only and not by way of limitation, a resident new to the City since the time of the list compilation for the Initial Opt-out) to take advantage of the Program. All Interim Opt-outs will be conducted in the same manner as the initial opt-out, except that any price notifications may be provided in an expedited fashion, as long as a full opt-out notice has been provided within the term of this Agreement.

2.8 Notwithstanding anything to the contrary herein, DESE agrees that, upon notification by any former Customer of the Buying Group and once provided with appropriate documentation,

DESE shall re-enroll any Customer who is in the Program and who moves to a new location within the City and within the Utility's service territory. This can be accomplished as an opt-in enrollment. Appropriate documentation shall include a signed agreement, telephone verification of enrollment, or internet enrollment into the Program. The price, terms, and conditions, once re-enrolled, shall continue for the remainder of the Customer's initial term at the Customer's prior address, although in no event shall the term exceed the term of this Agreement. In addition, DESE shall permit any new resident of the City, who is within the Utility's service territory and who moves into any facility existing at the time of execution of this Agreement, to opt into the Program at the then current terms and conditions for the Program, for the remaining term of the Program as specified in this Agreement. Residents of newly constructed facilities, if eligible, will be permitted to enroll in the Program during Interim Opt-out notifications and may, in DESE's sole discretion, be permitted to enroll in the Program as opt-in Customers, from time to time.

2.9 If the Utility charges a switching fee for all Customers choosing a new supplier under the Choice Program, DESE agrees to pay this fee.

2.10 DESE's arrangements regarding electric supply shall comply with the Choice Program. DESE will supply and manage deliveries to meet 100% of the Buying Group's electric supply requirements. Pricing shall not include Utility charges, fees, or expenses, other than as set forth in Section 2.9 hereof.

2.11 If the PUCO requires information or documents regarding the Aggregation, DESE agrees to assist in compiling such information in the possession and control of DESE.

SECTION 3 TIME OF PERFORMANCE AND TERM OF CONTRACT

3.1 This Agreement and DESE's obligations under this Agreement shall commence on the **May 2023 meter read date** (the "Effective Date") and shall terminate on the later of the **May 2024 meter read date** or the date of commencement of another agreement related to aggregation Administrative Services by and between the City and another such administrator, unless the Agreement is extended for an additional term(s) by mutual written agreement of the City and DESE.

3.2 The City shall have the right to begin negotiations with DESE and other electric suppliers during the term of this Agreement in order to ensure a seamless transition and continuation of the Program. If the City chooses a different supplier upon the termination of this Agreement, DESE shall reasonably cooperate with the City and the new supplier in a timely manner in order to ensure a seamless transition to the new supplier. This would include providing a list of Customers who, according to DESE's records, are participating in the Program at the time such request is made.

SECTION 4 DELIVERIES

4.1 On and after the Effective Date and throughout the term of this Agreement, DESE shall provide firm, full requirements electric supply to the Utility's distribution system in accordance with the Utility's delivery guidelines.

SECTION 5 BILLING AND PAYMENT

5.1 DESE shall delegate the billing obligations to the utility, such that Customers will receive an invoice for the Utility's charges and DESE's charges on the same monthly bill. Payment will be due according to the Utility's billing schedule. Customer will make payment to the Utility. If Customer fails to make any payments under this Agreement or fails to meet any agreed-upon payment arrangements, DESE may terminate this agreement by giving Customer written notice of at least fourteen (14) calendar days. Customer's failure to pay the Utility's charges may result in the account(s) being disconnected in accordance with the Utility's tariff. If an account is switched back to the Utility for service, it may not be served under the same rates, terms and conditions that apply to other customers served by the Utility.

SECTION 6 NON-PERFORMANCE/TERMINATION

6.1 If DESE fails to meet its obligations to deliver electric supply under this Agreement and its failure is not excused by any provision under this Agreement, then DESE shall reimburse the Customers for any difference between DESE's price and the price that the Customers pay for any replacement electric supplies, as necessary to meet the Customers' needs due to DESE's failure to perform.

6.2 If, based upon a material change in the creditworthiness of DESE, the City has reasonable grounds for insecurity regarding DESE's performance of any material obligation under this Agreement, the City may demand "Adequate Assurance of Performance," which, in the aggregate, may not exceed \$100,000. "Adequate Assurance of Performance" shall mean sufficient security, in the form, amount, and term reasonably acceptable to the City, including, but not limited to, a standby letter of credit or a guaranty.

If DESE fails to provide Adequate Assurance of Performance as described above, within five (5) business days of written demand from the City, then the City shall have the right, after written notice, to terminate this Agreement and have DESE transfer all aggregation Customers back to the Utility with the corresponding end-of-service notification.

6.3 A Party may terminate this Agreement prior to its natural expiration for: (i) a material breach of any of the terms contained herein by the other Party hereto which has not been cured within fifteen (15) days after written notice by the non-defaulting Party or such other cure period set forth in this Agreement, or (ii) in accordance with the following contingencies:

A. **Illegality.** Due to the adoption of or change in any applicable law or any interpretation of any applicable law by any judicial or governmental authority, it becomes unlawful for either Party or both Parties to perform any obligation under this Agreement or its Attachments.

B. **Adverse Government Action.** A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially and adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determines to be unreasonable or (C) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure event.

C. **Failure of the City to maintain its status as a PUCO Governmental Aggregator.**

6.4 **Regulatory Out** – Changes to laws, regulations, rules, decisions, entries, findings, or orders governing the generation, transmission, or sale of electricity may be made by different entities, including state agencies and regulatory bodies such as the Public Utilities Commission of Ohio (PUCO), federal agencies and regulatory bodies such as the Federal Energy Regulatory Commission (FERC), and Regional Transmission Organizations (RTO) that operate multi-state regional electric transmission systems such as PJM Interconnection LLC (PJM), the RTO that operates the regional electric transmission system in a multi-state region that includes Ohio. Such changes may include, without limitation, new, revised, altered, amended, or reinterpreted laws, regulations, rules, decisions, entries, findings, or orders relating to (i) the generation of electricity, (ii) the availability and reliability of electricity supply resources (including, without limitation, capacity), (iii) the reliability of the electricity grid, (iv) the transmission or delivery of electricity, and (v) the sale or marketing of wholesale and retail electricity (collectively, Regulatory Events).

DESE has no control over Regulatory Events. If any Regulatory Event makes this Agreement uneconomic or unprofitable for DESE, Customer agrees that DESE may propose new contract terms to Customer, including, without limitation, an increased price for the electricity delivered by DESE under this Agreement. If DESE proposes new contract terms in accordance with this clause, DESE will provide written notice to the Customer that identifies (1) the Regulatory Event(s) at issue, (2) the new contract terms proposed by DESE, and (3) when the new contract terms will take effect following Customer's acceptance. Customer will have thirty (30) days from the date of the written notice to affirmatively accept or reject the new contract terms. If Customer does not affirmatively accept the new contract terms within thirty (30) days of the written notice, DESE may in its sole

discretion elect to terminate this Agreement without penalty on the next available meter read date after the expiration of the thirty-day notice period and processing by the electric utility and DESE, after which Customer will return to Customer's electric utility or another CRES provider of Customer's choosing for electricity; alternatively, DESE may, in its sole discretion, elect to continue supplying electricity to Customer under the original terms of this Agreement.

SECTION 7 FORCE MAJEURE

7.1 Force Majeure shall include, but not be limited to the following: (i) physical events such as Acts of God, landslides, lightning, earthquakes, fires, storms (including hurricanes), or storm warnings, which result in evacuation of the affected area, floods, washouts, explosions, breakage, accident, or necessity of repairs to machinery or equipment or transmission or distribution lines; (ii) weather-related events affecting an entire geographic region, such as low temperatures that cause failure of transmission or distribution lines; (iii) interruption and/or curtailment of primary transmission or distribution lines where such interruption directly affects electric supply deliveries under this Agreement; and (iv) acts of others such as strikes, lockouts, or other industrial disturbances, riots, sabotage, insurrections, terrorist acts, or wars. DESE and the City shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

7.2 Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible transmission or distribution lines; (ii) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, DESE's ability to sell electric supply at a higher or more advantageous price than the price under this Agreement or the City's ability to purchase electric supply at a lower or more advantageous price than the price under this Agreement; or (iv) the loss or failure of DESE's electric supply or depletion of supply, except, in either case, as provided in Section 7.1.

The Party whose performance is prevented by Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. The claiming Party shall exercise due diligence to remove the inability to perform as soon as reasonably possible, if possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure event, to make or accept delivery of electric supply, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

SECTION 8 APPLICABLE LAW

This Agreement and all provisions herein will be governed by and interpreted under Ohio laws. Any and all litigation between DESE and the City related to this Agreement shall be brought in either a state or federal court located within the State of Ohio.

SECTION 9 MISCELLANEOUS

9.1 If any provision in this Agreement is determined to be invalid, void, or unenforceable by any court or agency having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement.

9.2 No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

9.3 This Agreement sets forth all understandings between the Parties respecting each transaction subject hereto, and any prior contracts, understandings, and representations, whether oral or written, relating to such transactions are merged into and superseded by this Agreement. This Agreement may be amended only in writing, executed by both Parties.

9.4 The Parties shall treat as confidential all terms and conditions of this Agreement, including information and documentation exchanged by the Parties during the negotiations of this Agreement. Neither Party will disclose terms and conditions of this Agreement to any other party, except as required by law. Notwithstanding the foregoing, the Parties shall be allowed to acknowledge that an Agreement for electricity does exist between the Parties.

9.5 The City and DESE each represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound thereby.

9.6 Neither Party may assign or transfer rights and obligations under this Agreement without the written consent of the other Party. Such consent may not be unreasonably withheld. Notwithstanding the foregoing, the DESE may assign this Agreement to an affiliate in connection with the sale of all or substantially all of the DESE's assets without the consent of City. If this occurs, the DESE shall provide the City with five (5) business days' written notice.

9.7 Any notices, requests or demands regarding the services provided under this Agreement shall be sent to the following parties:

A. CITY

City of Richmond Heights, Ohio
26789 Highland Road
Richmond Heights, OH 44143
Ph:
Email:

B. DESE

Attn: Retail Contract Administration
Dynergy Energy Services (East), LLC
6555 Sierra Drive, 1-W-1
Irving, TX 75039

Linda L. Ponikwia
Dynergy Energy Services (East), LLC
312 Walnut Street, Suite 1500
Cincinnati, Ohio 45202
Ph: 513-762-8219
Email: Linda.Ponikwia@vistraenergy.com

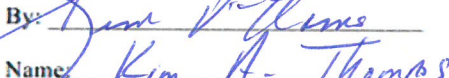
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first mentioned above.

CITY:

DESE:

City of Richmond Heights
(Cuyahoga County), OH

Dynergy Energy Services (East), LLC

By: 
Name: Kim A. Thomas
Title: Mayor

By: _____
Name: Linda L. Ponikwia
Title: Manager Municipal Aggregations

ATTACHMENT A

BILLING RATES

DESE will provide retail electric generation service during the term of this Agreement at the following Billing Rates:

City of Richmond Heights (Cuyahoga County), Ohio: Initial box below to Elect Term and Price		
	Retail Power Price	Delivery Term: 12 months
	\$0.06730/kWh	May 2023 meter read date through May 2024 meter read date

ATTACHMENT B

CIVIC GRANT

DESE will make a civic grant contribution for all usage consumed and paid for by participants of the **City of Richmond Heights (Cuyahoga County), Ohio**, Ohio Electric Aggregation Program.

City of Richmond Heights (Cuyahoga County), Ohio Initial box below to Elect Civic Grant Option:		
	Upfront Fee	The price offered by DESE in connection with the Electric Aggregation includes an adder in the form of a one-time civic grant. DESE shall pay the City of Richmond Heights (Cuyahoga County), Ohio a civic grant in the amount of Thirty Thousand Dollars (\$30,000) by September 15, 2023