



**CITY OF HUBER HEIGHTS
STATE OF OHIO
City Council Meeting
Special Session
June 29, 2022
5:30 P.M.**

City Hall - Council Chambers - 6131 Taylorsville Road

1. **Call The Meeting To Order - Mayor Jeff Gore**
2. **Roll Call**
3. **New Business**

ADMINISTRATION

Katie Knisley, Human Resources Director

- A. A Resolution Authorizing The City Manager To Accept An Electric Supplier For The Electricity Aggregation Program.
(first reading)

4. **Adjournment**

AI-8503

New Business A.
City Manager

City Council Special Meeting

Meeting Date: 06/29/2022

City's Energy Aggregation Program

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 06/21/2022

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Accept An Electric Supplier For The Electricity Aggregation Program.
(first reading)

Purpose and Background

This agenda item is to discuss an electric aggregation contract for the City's energy aggregation program provided by the City's energy aggregation consultant, Energy Alliances.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

AUTHORIZING THE CITY MANAGER TO ACCEPT AN ELECTRIC SUPPLIER FOR THE ELECTRICITY AGGREGATION PROGRAM.

WHEREAS, due to high prices in the energy market, including the recent price increase by the City’s default electrical supplier, City Council desires to seek an alternative source of electrical supply for the citizens; and

WHEREAS, Energy Alliances, the City’s energy aggregation consultant has identified Energy Harbor, LLC as a supplier that is willing to provide electrical energy supply for a cost that is currently less than the City’s default carrier; and

WHEREAS, City Council desires to enter into a contract with Energy Harbor, LLC to obtain an electric supplier to service the City under the electrical aggregation opt out program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio, that:

Section 1. The City Manager is hereby authorized to accept Energy Harbor, LLC as the electric supplier for the electric aggregation program and enter into an agreement substantially as set forth in Exhibit A with such supplier consistent with the Plan of Operation and Governance, and provided that there will be no termination or opt-in fees and the energy supply contract shall not exceed the price of 8.79 cents for a 36-month period.

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

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

**MASTER AGREEMENT TO PROVIDE SERVICES TO AN
AGGREGATED GROUP****BETWEEN****CITY OF HUBER HEIGHTS, OHIO****AND****ENERGY HARBOR LLC**

This Master Agreement (“Agreement”), is entered into as of this ____ day of _____, 2022 (“Effective Date”) by and between **Energy Harbor LLC** (“Supplier”), a Delaware Limited Liability Company with its principal place of business at 168 East Market Street, Akron, Ohio 44308 and **City of Huber Heights**, Miami and Montgomery Counties, Ohio (“Community” or “Governmental Aggregator”), an Ohio governmental aggregator (each a “Party” and collectively, “Parties”).

RECITALS

A. Supplier is certified by the Public Utilities Commission of Ohio (“PUCO”) as a Competitive Retail Electric Service (“CRES”) Provider to sell competitive retail electric service to customers in the State of Ohio utilizing the existing transmission and distribution systems.

B. Supplier (directly or through its affiliates) is an energy services provider with extensive experience in the provision of a broad range of energy related services.

C. Supplier sells competitive retail electric service and related services to inhabitants of municipal corporations, boards of township trustees, or boards of county commissioners acting as governmental aggregators for the provision of competitive retail electric service under authority conferred under Section 4928.20 of the Ohio Revised Code.

D. Both Parties have the corporate, governmental and/or other legal capacity, authority and power to execute and deliver this Agreement and related agreements and to perform its obligations hereunder.

E. The Governmental Aggregator has been certified by the PUCO as a governmental electricity aggregator pursuant to Chapter 4901: 1-24-01, *et. seq.* OAC. Supplier is under no obligation to provide Full Requirements Retail Electric Supply hereunder until Governmental Aggregator has been certified by the PUCO.

F. Governmental Aggregator may arrange for the provision of competitive retail electric service to its residential and commercial inhabitants that do not opt-out of or are otherwise ineligible to participate in the program (“Aggregation Program”). Governmental Aggregator desires that Supplier supply the total electric generation needs to all participants in the Aggregation Program located within the service territory of AES Ohio.

G. By this Agreement, Community and Supplier desire to enter into a mutually beneficial energy and services provisions relationship whereby Supplier shall provide Full Requirements Retail Electric Supply and related administrative services (“Administrative Services”) necessary to fulfill the obligations of this Agreement.

H. Community desires to enter into this Agreement with Supplier to provide energy and energy-related services to Eligible Customers through the Aggregation Program.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

GENERAL REQUIREMENTS

1.1 Governmental Aggregator Obligations and Authority.

1.1.1 The Governmental Aggregator: (1) shall take all necessary action to remain certified by the PUCO as a “governmental aggregator”; (2) shall establish and maintain an Aggregation Program for those residential and commercial inhabitants, within the boundaries of Community, that the Governmental Aggregator, together with Supplier, has determined will be provided the opportunity to participate in the Aggregation Program (“Eligible Customers”); (3) shall mail out the required enrollment and opt-out notices, which responsibility may be delegated by contract to Supplier; and (4) hereby authorize Supplier to contract for Full Requirements Retail Electric Supply with those Eligible Customers that do not opt-out of the Aggregation Program, rescind their switch to Supplier as part of their enrollment in the Aggregation Program, otherwise terminate their participation in the Aggregation Program or Full Requirements Retail Electric Supply from Supplier, or have their participation terminated by the Governmental Aggregator, or their Full Requirements Retail Electric Supply lawfully terminated by Supplier or the Electric Distribution Utility (“EDU”) (“Aggregation Program Customer” or “Participating Customer”).

1.1.2 The Governmental Aggregator shall, on a best efforts basis and in a timely manner, forward to Supplier all notices from the EDU concerning Participating Customers’ accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the EDU’s system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated, Supplier as its Full Requirements Retail Electric Supply provider for the Eligible Customers for the Term of this Agreement.

1.1.4 During the Term of this Agreement, the Governmental Aggregator hereby grants Supplier the exclusive rights to provide Full Requirements Retail Electric Supply to the Eligible Customers.

1.1.5 Customer Data and Load Forecast Information. Supplier and Governmental Aggregator shall cooperate to obtain the consent of Participating Customers to obtain all available Eligible Customers’ data and historical load and load forecast information, related to the Participating Customer’s load and consumption, from any entity in possession of such data.

1.1.6 Service Inquiries and Service Notices to Customer. Participating Customers may direct inquiries regarding this Agreement, and Full Requirements Retail Electric Supply provided hereunder, and any electric generation supply or billing questions, to Supplier at the address and phone number provided in Section 11.1, which address and phone number shall be provided in communications with Participating Customers regarding the Aggregation Program. Participating

Customers should direct inquiries concerning EDU related emergency, power outage, wire or service maintenance, metering, EDU service billing or other similar EDU related concerns to the EDU.

1.1.7 Point of Sale. Governmental Aggregator and Participating Customers acknowledge and agree that Supplier shall have no responsibility for damage to any property, or to any equipment or devices connected to the Participating Customers' electrical system.

ARTICLE 2 **SUPPLIER OBLIGATIONS**

2.1 Supplier Obligations.

2.1.1 Commencing on the Effective Date and during the Term, subject to the terms of this Agreement, Supplier shall provide Full Requirements Retail Electric Supply (subject to the terms of the appropriate transmission and/or distribution tariffs) sufficient to serve the total electric generation needs of the commercial and residential Aggregation Program Customers. Supplier shall arrange for the delivery of Full Requirements Retail Electric Supply in accordance with the requirements of the Participating Customers' respective EDU and Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Full Requirements Retail Electric Supply from an alternative supplier to the Point of Delivery, recognizing that the EDU provides utility distribution service from the Point of Delivery to the Point of Sale. To the extent that any services or requirements are provided by the EDU, Supplier shall not be responsible for the provision of such services. Notwithstanding the foregoing, Supplier is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform.

2.1.2 Supplier shall be responsible for all acts necessary for Supplier to perform its obligations hereunder, including but not limited to the scheduling of delivery of Full Requirements Retail Electric Supply hereunder.

2.1.3 Supplier shall provide Aggregation Program Customers with the environmental disclosure data and other data it is required to provide, if any, to comply with the rules of the PUCO.

2.2 Subcontracting. Supplier may subcontract the performance of its obligations under this Agreement. However, no subcontract shall relieve Supplier of any of its obligations and/or liabilities under this Agreement. Supplier shall be responsible for all payments and obligations as between Supplier and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor.

2.3 Communications and Press Releases. Community hereby agrees to allow Supplier to use Community's name and logo (if any) in any and all enrollment materials (including electronic media and Internet) and press releases for publicity and/or marketing purposes. Community will have the right to review and approve all such materials that utilize the Community's name and/or logo prior to distribution. Additionally, Community authorizes Supplier to represent that Supplier is the Community's exclusive provider of Full Requirements Retail Electric Supply for the Term of this Agreement. Community shall not release any promotional material referencing Supplier, including press releases, without Supplier's prior approval.

ARTICLE 3 **TERM AND TERMINATION**

3.1 Term of Agreement and Termination.

3.1.1 This Agreement may be terminated prior to the expiration of the Term, in compliance with this Agreement's provisions, if: (1) the Governmental Aggregator does not receive or fails to obtain or maintain PUCO Certification; (2) a Party exercises its right under Article 6 to terminate this Agreement; (3) Supplier fails to obtain or maintain its PUCO Certification; (4) an illegality occurs under Section 3.3; or (5) any of the situations in Sections 3.4 or 5.1 occurs. This Agreement shall terminate upon the expiration of this Agreement's Term, but this Agreement may also be renewed by mutual agreement for a term agreed upon by the Parties.

3.1.2 Term of Enrollment. Participating Customers shall remain enrolled in the Aggregation Program until the Participating Customer exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their participation in the Aggregation Program is terminated by the Governmental Aggregator, their Full Requirements Retail Electric Supply is lawfully terminated by Supplier or the EDU, or their electric service is terminated by the EDU or until this Aggregation Program is terminated, whichever occurs first.

3.2 Interaction Between Termination Dates of this Agreement and Contracts with the Participating Customer. Participating Customers initially enrolled in the Aggregation Program shall receive Full Requirements Retail Electric Supply at the rate(s) set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event or pursuant to the terms of Article 6, the Full Requirements Retail Electric Supply will terminate early and the Participating Customers may choose another CRES Provider or will be switched to EDU SSO Service in accord with the standard switching rules and applicable notices. The Participating Customers are responsible for arranging for their supply of Energy upon expiration or termination of this Agreement. If this Agreement is terminated prior to the end of the Term and a Participating Customer has not selected another supplier, such Participating Customer will be switched to SSO Service from the EDU.

3.3 Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it

becomes unlawful for a Party to perform any obligation under this Agreement, this Agreement may be terminated.

3.4 Termination Events. In the event any of the following conditions occur during the Term, Supplier shall have the right to terminate this Agreement without liability and close out its obligations hereunder:

(i) The Electric Security Plan (ESP), Market Rate Offer (MRO) and/or Competitive Bid Process (CBP), or other generation procurement process results in a PTC, as discounted hereunder in accordance with Section 4.2, that is equal to or less than the comparable annualized generation and transmission rates and riders as of the Effective Date of this Agreement.

(ii) The PUCO approves or implements a phase-in credit for generation charges of the EDU which affects the PTC or otherwise does not allow the EDU to reflect the full cost to procure generation in the PTC and Supplier, in its discretion, chooses to not finance the impact of that effect or if commercially reasonable rates and terms are not available for such financing.

(iii) The EDU will not provide consolidated billing consistent with previous practice.

3.5 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement.

3.6 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its best efforts to communicate to the non-terminating Party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the Term, each individual Participating Customer of the Aggregation Program will be provided written notification from the terminating Party of the termination of the Agreement at least thirty (30) days prior to termination, and in compliance with other regulatory or legal requirements and Participating Customers will also be notified of their right to return to the EDU or to select an alternate generation supplier. All other notification(s) shall be in accordance with PUCO requirements.

ARTICLE 4

ENERGY SCHEDULING, TRANSMISSION, PRICING AND DELIVERY

4.1 Scheduling, Transmission and Delivery. During the Delivery Term, Supplier shall schedule Energy as required by the RTO or other transmission provider and the EDU, and shall arrange for transmission and distribution service to the Participating Customers. Supplier will arrange for necessary electric distribution and transmission rights for delivery of such Energy to provide the Full Requirements Retail Electric Supply hereunder and subject to the understanding that Supplier has an obligation to make deliveries to Participating Customer as set forth in Section 2.1 except pursuant to Sections 3.3, 3.4, 5.1 or Article 7 of this Agreement. Supplier does not take responsibility for any delivery of services supplied by the EDU or RTO, or for the consequences of the failure to provide such services. Supplier shall not be responsible to

Participating Customer in the event the EDU or RTO disconnects, suspends, curtails or reduces service to Participating Customer (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the EDU's facilities, or to maintain the safety and reliability of the EDU's electrical system, or due to emergencies, forced outages, potential overloading of the EDU's transmission and/or distribution circuits, or Force Majeure or for any other reason permitted by the EDU's tariff or any other acts or omissions of the EDU.

4.2 Pricing. During the Delivery Period, Supplier shall provide Energy to all Participating Customers at the price set forth on Attachment A. Any bypassable riders approved by the PUCO and not included in the Price to Compare will be billed at their full rate. There will be no discount given on such charges as transmission and ancillary services if they are identified in a separate tariff or rider approved by the PUCO and not included in the Price to Compare.

4.3 Failure of Delivery. In the event that Supplier fails to schedule all or part of the Full Requirements Retail Electric Supply as set forth herein and Supplier's failure is not due to a Force Majeure Event, and a Participating Customer is required to obtain and pays for SSO Service or other Energy supply arrangement necessary to cure such Energy deficiency, Supplier shall reimburse Participating Customer, on the later of ten (10) days after receipt of invoice or the date payment would otherwise be due to Supplier, an amount determined by multiplying (a) the aggregate deficiency in the Full Requirements Retail Electric Supply by (b) the full replacement cost. IN THE EVENT OF SUPPLIER'S FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, SUPPLIER'S OBLIGATION TO PAY SUCH AMOUNT DURING THE PERIODS OF NON-DELIVERY SHALL BE THE GOVERNMENT AGGREGATOR'S AND THE PARTICIPATING CUSTOMERS' SOLE REMEDY FOR SUPPLIER'S FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT.

ARTICLE 5

BILLING AND PAYMENTS

5.1 Additional Costs. After the notice of this Aggregation Program is sent to Eligible Customers, in the event that there is a Change in Law (defined below), Participating Customers may receive a notification from Supplier, which shall include a description of one or more of the situations described below as may be applicable. If there is a Change in Law, Supplier may offer Participating Customers new Terms and Conditions. Participating Customers must indicate affirmative consent to the new Terms and Conditions as specified in the notices. If Participating Customers do not contact Supplier to accept the new terms, the Participating Customer(s) individual terms and conditions with Supplier will terminate on the date specified in the notices, and Participating Customer(s) may be returned to the EDU for retail electric service. Alternatively, Supplier may decide to terminate this Agreement pursuant to a Change in Law described above and below, and Participating Customers will receive at least 30 days' prior written notice of the termination, after which Participating Customers may be returned to the EDU for retail electric service. Whether Supplier offers Participating Customers new terms or terminates this Agreement under this provision, Participating Customers will not be responsible for the cancellation/termination fee (if any) set forth in the Pricing Attachment. Participating

Customers must still pay all Supplier charges through the date they are returned to their EDU or switched to another CRES provider for service.

Change in Law shall be defined as: (1) any change in any statute, rule, regulation, order, law, or tariff promulgated by any court, governmental authority, utility, Independent System Operator (“ISO”), Regional Transmission Organization (“RTO”), or other service provider, or any change in operating procedure which alters to the detriment of Supplier its costs to perform under this Agreement; or (2) for “Percent off the Price to Compare (“PTC”) rate” products only, the PUCO approves or implements a phase-in credit for generation and/or transmission charges of the EDU or takes any other action which affects the PTC or otherwise does not allow the EDU to reflect the full cost to procure generation and transmission in the PTC.

5.2 Billing. Billing shall be provided by the EDU under a consolidated billing format pursuant to the EDU’s tariff provisions and PUCO rules applicable to Participating Customer(s). If a Participating Customer fails to pay amounts due within the specified time period for said payments in accord with the EDU’s tariff and PUCO regulations, Supplier retains the right to assess late payment fees, or deem such non-payment a default of Participating Customer for purposes of Section 6.1.1 of this Agreement. Supplier reserves the right to convert Participating Customer from Consolidated Billing to dual billing, or from dual billing to consolidated billing if such a conversion will facilitate more timely billing, collections, and/or payment.

ARTICLE 6

DEFAULT AND REMEDIES

6.1 Event of Default.

6.1.1 A “Community Event of Default” shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

- (i) Any representation or warranty made by Community in Article 9 hereunder is false or misleading in any material respect when made;
- (ii) The non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) and such failure is not remedied within thirty (30) days after written notice thereof unless the cure requires longer than the thirty (30) days to effect and Community is diligently working towards such cure; and

6.1.2 A “Supplier Event of Default” shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

- (i) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

(ii) any representation or warranty made by Supplier in Article 9 hereunder is false or misleading in any material respect when made or when deemed made;

(iii) the non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above and as set forth in Section 4.3) if such failure is not remedied within thirty (30) days after written notice thereof, unless the cure period reasonably requires more than thirty (30) days to effect and Supplier is diligently working towards such cure; and

6.2 Rights and Remedies.

6.2.1 Rights and Remedies for a Community Event of Default. Subject to other provisions of this Agreement, if Community is the defaulting Party hereunder, so long as such Community Event of Default shall have occurred and be continuing, Supplier shall have the right to (i) designate a date (“Early Termination Date”), no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, on which this Agreement shall terminate and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, Supplier shall have the right to seek the remedies of specific performance of Community’s and Participating Customers’ obligations hereunder and/or injunctive relief to continue to provide Full Requirements Retail Electric Supply hereunder.

In the case of a Community Event of Default, the Parties recognize that damages or other amounts to be received by Supplier hereunder may be inadequate because this Agreement is unique and the actual damages of Supplier may exceed any amounts to be received by Supplier hereunder. Therefore, Community waives all of its rights to assert as a defense to an action for specific performance and injunctive relief that the amounts payable to Supplier hereunder are adequate to cover the actual damages of Supplier.

6.2.2 Rights and Remedies for a Supplier Event of Default. Subject to other provisions of this Agreement, if Supplier is the defaulting Party hereunder, so long as such Supplier Event of Default shall have occurred and be continuing, Community shall have the right to (i) designate an Early Termination Date, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, Community shall have the right to seek the remedies of specific performance and/or injunctive relief, *inter alia*, to ensure the continuations of Full Requirements Retail Electric Supply hereunder or to ensure the payment of grants required by this Agreement.

Notwithstanding any other provision of this Agreement, the remedies set forth in Section 4.3 shall be the sole and exclusive remedies for any failure of Supplier to deliver Full Requirements Retail Electric Supply. As long as Supplier is supplying Full Requirements Retail Electric Supply to the Participating Customers at the price and upon the terms and conditions of this

Agreement, Community shall not have the right to terminate this Agreement or suspend performance.

6.2.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

ARTICLE 7 **FORCE MAJEURE**

7.1 Excused Failure to Comply. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly or indirectly from a Force Majeure Event. If despite its commercially reasonable efforts, either Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such period of the Force Majeure Event. The Party claiming excuse due to a Force Majeure Event shall exercise commercially reasonable efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure Event and shall exercise commercially reasonable efforts and due diligence to mitigate the effects of the Force Majeure Event. Nothing contained in this Section 7.1 shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved.

7.2 Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, winds, floods, earthquakes, storms, droughts, fires, pestilence, destructive lightning, hurricanes, washouts, landslides, tornadoes and other natural catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; the failure of facilities, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority, a change in law or court order; provided, however, that any such discretionary acts, failure to act or orders of any kind by Government Aggregator may not be asserted as a Force Majeure Event by Government Aggregator. A change in economic electric power market conditions shall not constitute a Force Majeure Event. Failure or interruptions, including without limitation, government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying Energy under this Agreement shall not constitute a Force Majeure Event unless Supplier has arranged for service on these systems at a level of firmness as required to provide the Full Requirements Retail Electric Supply agreed upon herein.

7.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the Force Majeure Event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

ARTICLE 8

LIMITATION OF LIABILITY

8.1 **LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO A PARTICIPATING CUSTOMER OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON A STATUTE, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN SECTION 4.3 AND ARTICLE 6 OF THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH SECTION 4.3 OR ARTICLE 6 PROVIDES THE EXPRESS REMEDY OR MEASURE OF DAMAGES, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. FOR ALL OTHER PROVISIONS OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PART, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

8.2 **DISCLAIMER.** SUPPLIER DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF FULL REQUIREMENTS RETAIL ELECTRIC SUPPLY TO AGGREGATION PROGRAM CUSTOMERS DURING FORCE MAJEURE EVENTS. SUPPLIER WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE EDU, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF EDU'S TRANSMISSION OR DISTRIBUTION SERVICE. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties by Supplier. Supplier hereby represents and warrants to Community as of the Effective Date as follows:

(i) Supplier is a company, duly formed, validly existing and in good standing under the laws of the State of Delaware;

(ii) Supplier has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) The execution and delivery of, and performance under, this Agreement are within Supplier's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it;

(iv) This Agreement has been duly executed and delivered by Supplier, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Supplier enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) None of the documents or other written information furnished by or on behalf of Supplier to Community or Eligible Customers pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(vi) No Bankruptcy is pending against it or to its knowledge threatened against it.

9.2 Representations and Warranties by Community. Community hereby represents and warrants to Supplier as of the Effective Date as follows:

(i) Community is duly authorized as the agent for the Participating Customers, as a duly authorized governmental aggregator;

(ii) Community has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within Community's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it. Neither the execution nor delivery by Community of this Agreement nor the consummation by Community of the transactions contemplated hereby or thereby does or will result a breach or violation of the Agreement establishing Community's Aggregation Group, or its bylaws, or any material provision of the governance document related thereto;

(iv) This Agreement has been duly executed and delivered by Community, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Community, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and similar laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(v) Community is entering into this Agreement with a full understanding of all of the risks disclosed in this Agreement (economic and otherwise), and it is capable of assuming and willing to assume those risks;

(vi) None of the documents or other written information furnished by or on behalf of Community to Supplier pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(vii) Community has the contractual right to enter into this Agreement, to contract with Supplier to supply Full Requirements Retail Electric Supply and Administrative Services to meet the obligations of its Aggregation Program Customers, and shall enforce its contractual agreements and rights.

ARTICLE 10

CONFIDENTIAL INFORMATION

10.1 Confidential Information. Any Confidential Information, as defined in Section 10.2 herein, made available pursuant to this Agreement and conspicuously marked or stamped as "Confidential" shall, to the extent permitted by Ohio law, be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify

any matter deemed to be Confidential Information at the time the information is provided. Any information not designated, as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party's claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

10.2 Confidential Information Defined. "Confidential Information" means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Recipient") regarding itself, its business, the business of its affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; or (d) is already in the Recipient's possession prior to disclosure by the Disclosing Party.

10.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The Recipient shall make commercially reasonable efforts to notify the Disclosing Party if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter.

ARTICLE 11 **MISCELLANEOUS**

11.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and Attachment A shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

Energy Harbor LLC

For Notices or Inquiries Regarding
this Agreement:

Director, Government Aggregation
Energy Harbor LLC
168 East Market Street
Akron, Ohio 44308

City of Huber Heights

For Notices or Inquiries Regarding
this Agreement:

Phone:

11.2 Entire Agreement. This Agreement, including Attachment A hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

11.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the non-waiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

11.4 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

11.5 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of Attachment A hereto, the provisions of Attachment A shall control.

11.6 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

11.7 Assignment. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld; provided, however, that such authorization may be withheld upon a reasonable determination that the proposed assignee does not have at least the same financial and technical abilities. Notwithstanding the foregoing, Supplier may, without the consent of Community or the Participating Customers, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an affiliate of Supplier; or (c)

transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of Supplier. Upon an assignment pursuant to (b) or (c), Community and the Participating Customers agree that Supplier shall have no further obligations regarding future performance hereunder. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

11.8 Recitals. The Parties agree and acknowledge that the prefatory statements and recitals in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

11.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

Energy Harbor LLC

City of Huber Heights

Signed: _____

Signed: _____

Printed

Printed

Typed Name: _____

Typed Name: _____

Title: _____

Title:

Date: _____

Date: _____

ATTACHMENT A:

**Pricing and Other Conditions
to Retail Generation Service Offer**

Attachment A to Master Agreement

Between

City of Huber Heights, Miami and Montgomery Counties, Ohio

and

Energy Harbor LLC

Term:

Beginning with September 2022 meter read dates through September 2025 meter read dates

Pricing:

x.xx¢ per kWh

EDU:

AES Ohio

Eligible Rate Codes:

Residential, Commercial (below either 700,000 kWh annually or 100 kW peak monthly demand)

Mercantile Accounts: Mercantile Customers (defined below) must “opt-in” to the Aggregation Program by notifying Supplier that they are a Mercantile Customer who seeks to join the Aggregation Program. Supplier will provide pricing and terms to each Mercantile Customer at the time the Mercantile Customer requests to opt-in. The Mercantile Customer can accept or reject the pricing and terms after it has been provided by Supplier, provided however, that if Mercantile Customer rejects the pricing or the terms offered by Supplier, the Mercantile Customer shall not be eligible to join or participate in the Aggregation Program. “Mercantile Customer” as used herein shall meet the definition of “Mercantile customer” set forth in R.C. 4928.01(19) or any successor definition codified in the Ohio Revised Code.

Termination Fee:

None

Administrative Services:

- Design, print and mail the Opt-out letter to all Eligible Customers including a sheet of Frequently Asked Questions to provide assistance.
- Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide a call center to handle information calls, in a timely and agreed upon fashion.
- File the required information for PUCO reports on behalf of the Community.
- Conduct supplemental opt-out mailings on a periodic basis.