

	Yes	No
Emergency	5	0
First Reading		
Second Reading		
Third Reading		

RESOLUTION 2020-18

A RESOLUTION APPROVING A LETTER OF INTENT BETWEEN THE CITY OF WAUSEON, THE OHIO MUNICIPAL LEAGUE SERVICE CORPORATION, AND OML ENERGY SOLUTIONS FOR POTENTIAL PURCHASE OF SOLAR-GENERATED ENERGY AND RELATED ELECTRIC CONSULTING AGREEMENT; AND DECLARING AN EMERGENCY

WHEREAS, the City of Wauseon allocates funds each year in its Annual Appropriation Ordinance for the purchase of electrical power; and

WHEREAS, The Ohio Municipal League Service Corporation (the “OMLSC”) has presented a Letter of Intent (“LOI”) in connection with potential opportunities to purchase energy generated by utility scale solar facilities in conjunction with a OMLSC Participation Agreement for its Energy Purchasing Program (the “Agreement” or “Program”) between the City of Wauseon, OMLSC and OML Energy Solutions, a subsidiary of Palmer Energy Company (“Palmer”); and

WHEREAS, the LOI constitutes an agreement between the City of Wauseon, OMLSC, and Palmer whereby the City of Wauseon would agree to (1) use good faith efforts to consider and negotiate the purchase of energy and any other related attributes from a utility scale photovoltaic solar facility through a power purchase agreement or similar agreement (a “PPA”) if Palmer develops and identifies such an opportunity at or below \$41.00 per MW-hour price (the “Purchase Opportunity”) and (2) the proposed key provisions of the Agreement, whereby OMLSC and Palmer would provide electric consulting services for the purchase, transmission and arrangement of delivery of electric services for the City of Wauseon through the Program for the City of Wauseon’s facilities and/or its electric governmental aggregation if the City of Wauseon enters into a PPA resulting from the Purchasing Opportunity ;and

WHEREAS, the LOI shall automatically terminate upon the earlier of (a) January 1, 2022, or (b) the execution of an Agreement; and

WHEREAS, a copy of the LOI is on file in the office of the Clerk of Council; and

WHEREAS, Council finds that entering into the LOI is in the best interest of the City in that the purchase of energy generated by utility scale solar facilities may decrease the cost of electricity for the citizens of Wauseon; and

WHEREAS, this Resolution should be declared an emergency measure necessary for the immediate preservation of the health, safety, and public welfare of the City, and for the further reason that the OMLSC and Palmer require that the City execute the LOI immediately in order to be eligible to participate in a Participation Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Wauseon, Fulton County, Ohio, as follows:

Section 1.

That the Mayor or her designee be, and hereby is, authorized to execute the Letter of Intent on behalf of the City of Wauseon.

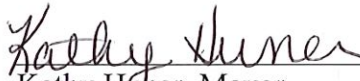
Section 2.


That the Mayor or her designee is further authorized to enter into any agreements consistent with the Letter of Intent.

Section 3.

That this Resolution be, and hereby is, declared to be an emergency measure, necessary to request immediate preservation of health, safety, and public welfare of the citizens of the City of Wauseon, and shall be in full force and effect from and immediately after its passage.

Passed: October 19, 2020


Kathy Hoyer, Mayor


Shane Chamberlin, President of Council

Attest: 
Andrea Gerken
Clerk of Council

Approved as to Form:


Thomas A. McWatters III
City Law Director

Mayor
Kathy Huner

City Council
Shane Chamberlin
Patrick Griggs
Steve Schneider
Harold Stickley
Jeff Stiriz
Scott Stiriz



230 Clinton Street • Wauseon, Ohio 43567

Director of Law
Thomas A. McWatters III

Director of Finance
Jamie L. Giguere

Director of Public Service
Keith C. Torbet

Police Chief
Kevin Chittenden

Fire Chief
Rick Sluder

October 20, 2020

Amy Hoffman
Palmer Energy
5577 Airport Hwy. Ste. 101
Toledo, OH 43615

Re: Letter of Intent for Potential Purchase of Solar-Generated Energy and Related Electric Consulting Agreement

Dear Amy:

The Ohio Municipal League Service Corporation (the "OMLSC") presents this Letter of Intent (this "LOI") in connection with potential opportunities to purchase energy generated by utility scale solar facilities in conjunction with a OMLSC Participation Agreement for its Energy Purchasing Program (the "Agreement" or "Program") between the City of Wauseon ("Municipality"), OMLSC and OML Energy Solutions, a subsidiary of Palmer Energy Company, (the "Manager") which are each a "Party" and collectively the "Parties" to this LOI.

This LOI constitutes an agreement between the Municipality, OMLSC and the Manager whereby the Municipality agrees to (1) use good faith efforts to consider and negotiate the purchase of energy and any other related attributes from a utility scale photovoltaic solar facility through a power purchase agreement or similar agreement (a "PPA") if the Manager develops and identifies such an opportunity at or below \$41.00 per MW-hour price (the "Purchase Opportunity") and (2) the proposed key provisions of the Agreement, whereby OMLSC and the Manager would provide electric consulting services for the purchase, transmission and arrangement of delivery of electric City/Village through the Program for the Municipality's facilities and/or its electric governmental aggregation if Customer enters into a PPA resulting from the Purchase Opportunity. This LOI is intended to be non-binding on the Parties hereto, except for the provisions of paragraphs 1, 2, 7, 8, 9, 10 and 11.

(1) If a Purchase Opportunity is identified by the Manager for the Municipality, then the Municipality shall use good faith efforts to negotiate with the applicable counter-parties to enter into a PPA along with any other necessary agreements for the purchase of energy and if available and offered, the purchase of other related attributes from the production of the energy. The Parties contemplate that a purchase of energy through a Purchase Opportunity would require, without limitation, a contract with a certified competitive retail electric service provider to allow for the retail delivery of the energy to the Municipality in addition to load shaping capabilities, all of which would be used to deliver energy to the Municipality's facilities and/or participants in its electric governmental aggregation.

(2) If the Municipality enters into the necessary agreements to purchase energy through a Purchase Opportunity, then simultaneously with the execution of those agreements, the Municipality shall either extend its current or sign a new Agreement with OMLSC and the Manager that include exhibits to that Agreement for energy consulting services on electric purchases for facilities and/or the electric governmental aggregation operated by the Municipality.

Yes/ No (circle one) The Municipality agrees to include its eligible facilities in this LOI.

Yes/ No (circle one) The Municipality agrees to include its electric governmental aggregation program in this LOI.

(3) Manager's Services. The Manager will provide its ongoing services as described in the Agreement to assist the Municipality in purchasing electricity the Municipality consumes for its facilities and/or electric governmental aggregation program as selected below. Generally, the Manager shall assist the Municipality in securing electric pricing proposal(s) for electric City/Village supplies, periodically provide recommendations on potential suppliers, and recommend the type of pricing mechanism(s) to utilize. The Manager shall evaluate electric market conditions and opportunities and may suggest or recommend other electric savings or cost control opportunities for the Municipality to consider. The Municipality understands that facilities receiving electric distribution service from a municipal electric utility or electric cooperative would not be eligible for this Program.

(4) Term. The extended or new term of the Agreement would be for the longer of a period of Ten (10) years or the term provided for in the PPA resulting from the Purchase Opportunity, with the commencement date to be determined by the Parties but no later than the date the Purchase Opportunity results in energy being purchased by the Municipality.

(5) Compensation. Compensation for shall be in the amounts described in the Agreement for the "Electric Purchasing Program" (for facilities) and the "Electric Aggregation Purchasing Program" (for electric governmental aggregation). This compensation shall be included in the various electric supplier pricing offers.

(6) Exclusivity. The Municipality agrees to utilize the OMLSC and the Manager under the terms of the Agreement and be the exclusive consultant on 100% of Customer's eligible electric the Municipality's requirements for all of the Municipality's facilities and/or the participants in its electric governmental aggregation program. Such exclusivity shall not preclude the Municipality from engaging other consultants for energy consulting services for the Municipality's electricity requirements for its facilities commencing after the expiration of the Term.

(7) Confidentiality. The OMLSC and the Manager understand that the Municipality is a public entity and is subject to the Ohio Public Records Act, O.R.C. 149.43, *et seq.*, and that any record kept by the Customer that is deemed a public record is subject to release if a proper request is made. It is expressly understood by the Parties that O.R.C. 149.43 requires the Municipality, upon receipt of a public records request, to promptly prepare public records for inspection and to provide copies of public records in a reasonable time and that the Municipality may determine, in its sole discretion, that information is a public record subject to such release. Notwithstanding the immediately foregoing sentence, the Municipality agrees to notify the OMLSC and Manager as

soon as practically possible of a public records request that could result in the public disclosure of this LOI.

(8) Fees and Expenses. The OMLSC and Manager shall bear their own fees and expenses, and the Municipality shall bear its own fees and expenses, including, but not limited to, fees and expenses of attorneys and financial or other advisors, incurred in connection with the execution of this LOI. This paragraph shall survive the Termination Date.

(9) Governing Law and Venue. This LOI shall be governed by and construed in accordance with the internal laws of the State of Ohio. Any litigation or other proceeding arising out of or relating to this LOI must be brought in Ohio before a court or administrative body having jurisdiction over the litigation or proceeding. The Municipality acknowledges and agrees that any breach of any binding provision of this LOI by the Municipality is not subject to any protection of sovereign immunity, and that the OMLSC and/or Manager may seek specific performance to remedy any breach by the Municipality of this LOI. To the extent necessary, the Municipality waives any and all immunity it may have under Ohio law for any claim by the OMLSC and/or Manager for a breach of this LOI by the Municipality with such waiver made knowingly, intelligently and voluntarily. This paragraph 9 shall survive the Termination Date.

(10) Assignments. No Party will assign this LOI without the prior written consent of the other, which consent will not be unreasonably withheld. In no event will the Party assigning its interest be released from any of its obligations to any other Parties.

(11) Non-Binding and Binding Provisions. This LOI is not intended to create binding obligations on any of the Parties hereto, except that paragraphs 1, 2, 7, 8, 9, 10 and 11 shall be binding upon the Parties in accordance with their respective terms.

(12) Independence. Nothing herein is intended to create a partnership, joint venture, agency or other relationship creating fiduciary or quasi fiduciary duties or similar duties or obligations, or otherwise to subject the Parties to joint and several or vicarious liability, or to impose any duty, obligation, or liability on a Party that would arise from joint and several or vicarious liability.

(13) Counterparts. This LOI may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. PDF and facsimile copies of signatures will be treated as originals.

(14) Entire Agreement. This LOI constitutes the entire agreement between the OMLSC, Manager and the Municipality regarding the subject matter thereof. No modification or amendment hereof shall be effective unless in writing and signed by a duly authorized representative of each Party.

(15) Duly Authorized Representative. The individual(s) executing this LOI on behalf of each Party does hereby represent and warrant that he or she is duly authorized and empowered to execute same on behalf of his or her Party, and to fully bind that Party to all of the terms hereof.

(16) No Drafting Bias. In the event an ambiguity or question of intent or interpretation arises, this LOI will be enforced and construed as if drafted jointly by the Parties, and no

presumption or burden of proof will arise favoring or disfavoring either party or its construction or interpretation of this LOI by virtue of the authorship of any of terms or provisions of this LOI.

(17) Termination. This LOI shall automatically terminate upon the earlier of (a) January 1, 2022 or (b) the execution or extension of the Agreement (the "Termination Date").

If the foregoing terms are acceptable to the Municipality, please so indicate by signing LOI in the space provided below and returning it to the OMLSC and Manager no later than September 1, 2020. Please call should you have any questions.

OML SERVICE CORPORATION

By: _____
Garry E. Hunter

CITY of Wauseon

Date of Adoption
of Approving Ordinance or Resolution
October 19, 2020

By: Kathy Huner
Kathy, Huner Mayor

Address: City of Wauseon
230 Clinton St.
Wauseon, Ohio 43567

OML ENERGY SOLUTIONS

By: _____

5577 Airport Highway, Suite 101
Toledo, OH 43615