

Appendix A

SERVICES AGREEMENT

THIS **AGREEMENT** dated as of the X day of XX, 2021

B E T W E E N:

THE CORPORATION OF THE TOWN OF OAKVILLE

a municipal corporation in the Province of Ontario
(the “Town”)

-and-

FUTURE ENERGY OAKVILLE CENTRE

a corporation incorporated under the laws of the Province of Ontario, operating
as Future Energy Oakville
 (“FEO”)

WHEREAS:

- A. A sustainable energy transformation is critical to addressing the climate emergency and achieving a community energy vision that is clean, affordable, and resilient in the Town of Oakville.
- B. FEO is a corporation without share capital under the *Corporations Act*, R.S.O. 1990, c. C-38, as amended.
- C. The Town is a municipal corporation.
- D. The Town approved \$100,000 of funding to FEO in 2020 and an additional \$100,000 of funding from the Town was approved through the Town’s 2021 budget process. Town Council directed staff to prepare a Services Agreement between the Town and FEO.
- E. The Community Energy Strategy (“CES”) has been described in the staff report to the February 25, 2020 Special Council Meeting (“SCM”) under the discussion item entitled *Oakville’s Community Energy Plan*. A Services Agreement model to accelerate the implementation of the CES, was endorsed in principle by Town Council through the

unanimous endorsement of the CES by Town Council within by-law 2020-032 enacted in the SCM.

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which are hereby confirmed, the parties hereto covenant and agree as follows:

1. THE INTENTION OF THE PARTIES

- a) The truth and accuracy of the foregoing recitals are acknowledged and confirmed by all the parties and the recitals form part of this Agreement.
- b) All the parties are committed to working together productively in a professional, diligent, and co-operative manner to carry out the obligations created by this Agreement.

2. IMPLEMENT THE COMMUNITY ENERGY STRATEGY

FEO agrees to provide the following services to accelerate and coordinate implementation of the Community Energy Strategy in Oakville:

- a) Develop a business plan for FEO approved by its Board to determine business objectives and performance metrics.
- b) Respond to inquiries from the public and private sector on community energy related issues and opportunities.
- c) Develop and maintain a virtual presence including a FEO website.
- d) Develop a framework to report on progress to the public, investors, funders, and the Oakville Energy Task Force.
- e) Work with the Oakville Energy Task Force through a separate Memorandum of Understanding between FEO and the Oakville Energy Task Force.
- f) Seek opportunities through grants, partnerships, private-sector investment, and other funding organizations for FEO's operational funding.
- g) Plan and coordinate Community Energy Strategy's priority projects with partners, including, but not limited to, the Town.
- h) Ensure program governance, funding and resourcing align with the strategic objectives of FEO.

- i) Provide strategic oversight and technical advisory services for effective and efficient delivery of the Community Energy Strategy priority projects.

3. **ADMINISTRATION**

Throughout the term of this Agreement, the Town agrees to provide administrative support, including, but not limited to:

- a) coordinating the Oakville Energy Task Force and its subcommittees;
- b) providing administrative support to FEO's Board of Director and Member meetings;
- c) compiling informational and summary reports where required for business continuity;
- d) documenting and knowledge sharing to facilitate staff training and onboarding;
- e) allowing FEO to use 1225 Trafalgar Road, Oakville, ON L6H 0H3 as a mailing address until such time FEO provides another mailing address;
- f) providing administrative support for the Oakville Energy Task Force as outlined in the Oakville Energy Task Force charter;
- g) providing support to FEO for pursuing core funding opportunities; and
- h) supporting FEO's engagement and communications efforts.

4. **GOVERNANCE**

FEO agrees to do the following:

- a) ensure that at least one staff member is onboarded to FEO during the term of this Agreement;
- b) keep all proper books and records as required by law; and
- c) provide a presentation to Town Council by June 30, 2022 with financial, analytic, and operational data to show its progress in the items listed in Section 2 of this Agreement.

5. **OVERSIGHT**

The Town's Economic Development and Corporate Strategy department will be the department within the Town responsible for coordinating the Town's obligations under this Agreement.

6. **FUNDING**

The Town shall contribute to FEO funding of \$100,000 in 2021, in accordance the terms of this Agreement, as approved by Council in the 2021 budget within 60 calendar days following the execution of this Agreement. Future funding from the Town to FEO will be subject to separate Service Agreements or an amendment of this Agreement to reflect same.

7. INSURANCE AND INDEMNIFICATION

- a) Unless caused by or to the extent contributed to by the negligent act or omission of FEO or anyone for whom it is at law responsible for, the Town hereby fully indemnifies, holds harmless, and shall defend FEO from and against any and all actions, suits, claims, and demands, and from all loss, costs, charges, and expenses, including legal expenses, which may be brought against or made upon FEO by any party whatsoever, or which may be incurred, sustained, or paid by FEO in consequence of the breach, violation or non-performance by the Town of any of the Town's obligations pursuant to this Agreement. This indemnification shall survive any termination of this Agreement.
- b) FEO shall maintain its own Directors and Officers insurance policy satisfactory to the Town. The costs to FEO of maintaining its own insurance are considered operating expenses of FEO.
- c) Unless caused by or to the extent contributed to by the negligent act or omission of the Town or anyone for whom it is at law responsible for, FEO hereby fully indemnifies, holds harmless, and shall defend the Town from and against any and all actions, suits, claims, and demands, and from all loss, costs, charges, and expenses, including legal expenses, which may be brought against or made upon the Town by any party whatsoever, or which may be incurred, sustained, or paid by the Town, in consequence of the breach, violation or non-performance by FEO of any of FEO obligations pursuant to this Agreement. This indemnification shall survive any termination of this Agreement.

8. TERM

The term of this Agreement (the "Term") shall be 14 months commencing xxxx xx, 2021 and terminating on xxxx xx, 2022 unless extended by the parties in writing.

9. TERMINATION

- a) Notwithstanding anything herein contained, if, in the reasonable opinion of the Town, FEO is in material breach of this Agreement, the Town shall provide FEO with written notice specifying in reasonable detail the nature of such breach. If the breach has not been cured within 10 days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided FEO undertakes diligent, good faith efforts to cure the default within such 10-day period and continues such efforts thereafter), then the Town may terminate this Agreement.
- b) In the event of early termination by reason of material breach of the Agreement by FEO under clause 9a above, the Town shall not be liable to FEO for any costs or losses directly or indirectly, in whole or in part, sustained by FEO as a result thereof.
- c) This Agreement will be terminated without notice in the event that FEO becomes insolvent or bankrupt, has a receiver appointed, or makes an assignment for the benefit of its creditors.

10. GENERAL

- a) Neither party shall assign or transfer in any manner this Agreement without the prior written consent of the other, acting reasonably.
- b) FEO shall throughout the Term of this Agreement maintain its status as a corporation without share capital under the laws of Ontario.
- c) Notice for the purpose of this Agreement shall be deemed effectively given if:
 - a. Delivered in person to the representative noted below;
 - b. Except during a period of actual or imminent interruption of postal service due to strike, lockout, pandemic, or other cause, sent by prepaid mail to the attention of and at the address coordinates noted below; or
 - c. Sent by electronic email transmission to the email coordinate noted below;
 - i. In the case of notice to FEO: then to the address that FEO shall have advised the Town in writing of within 48 hours of such a request. Email: to the email that FEO shall have advised the Town in writing within 48 hours of such a request
 - ii. In the case of notice to the Town: Director of Economic Development and Corporate Strategy, 1225 Trafalgar Road, Oakville, ON L6H 0H3 Email: [insert email] with a copy to: Town Solicitor, 1225 Trafalgar Road, Oakville, ON L6H 0H3 Email: [insert email]
 - d. Any notice so given shall be deemed to have been given and to have been received on the day of delivery, if so delivered; on the fifth day (excluding each day during which there exists any interruption of postal services due to strike, lockout, pandemic or other cause) following the mailing thereof, if so mailed; and on the day that notice was sent by email transmission, provided such day is not a weekend or statutory holiday observed in the Province of Ontario. Representatives and coordinates for notice may be changed at any time and from time to time by giving notice in accordance with this Section.
- d) No condoning or overlooking by a party of any default, breach, or non-observance by the other party shall operate as a waiver of such party's rights hereunder in respect of any continuing or subsequent default or breach. All rights and remedies herein are cumulative and alternative.
- e) Time shall be the essence of this Agreement.
- f) This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior discussions, agreements and understandings whatsoever with respect to its subject matter, and may not be amended except by an instrument in writing duly approved and executed by the Town and FEO. There are no conditions, warranties, representations, or other agreements in connection with this Agreement except as specifically set out herein.

- g) If any part of this Agreement shall be declared illegal or unenforceable by a court of competent jurisdiction, it shall be severed from and deemed never to have formed a part of this Agreement, and the remainder of this Agreement shall remain in full force and effect and enforceable in accordance with its terms.
- h) This Agreement shall be construed and governed by the laws of the Province of Ontario.
- i) The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement.
- j) This Agreement shall extend to, ensure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers who are duly authorized to do so.

FUTURE ENERGY OAKVILLE CENTRE

Per: _____

, Chair

I have authority to bind the corporation.

THE CORPORATION OF THE TOWN OF OAKVILLE

Per: _____

We have authority to bind the corporation.