

January 27, 2021

Ms. Aida Camacho-Welch  
The Secretary of the Board  
Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, NJ 08625-0350  
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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

**Subject: Government Energy Aggregation Submittal – the City of Hoboken**  
**Pursuant to N.J.A.C. 14:4-6.6(i)**

Dear Secretary Camacho-Welch:

The City of Hoboken, Hudson County, will be participating in a government energy aggregation program known as the City of Hoboken Energy Aggregation Program (CHEAP). The municipality of served by PSE&G.

The individual responsible for the submission of this document is:

Ms. Tara Pasca, CEP  
Concord Energy Services  
Manager, Energy Services Government Programs  
(856) 427-0200  
520 S. Burnt Mill Road  
Voorhees, NJ 08043  
[tpasca@concord-engineering.com](mailto:tpasca@concord-engineering.com)

The following individual from the municipality has been designated by the municipality's governing body with respect to matters related to the government energy aggregation program:

Jennifer S. Gonzalez, AICP, PP, CFM, ENV SP, LEED GA  
City of Hoboken

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520 S. Burnt Mill Road  
Voorhees, NJ 08043  
856.427.0200

**PHILADELPHIA**  
3020 Market St., #103  
Philadelphia, PA 19104  
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**ATLANTIC CITY**  
2311 Atlantic Avenue  
Atlantic City, NJ 08401  
609.246.7255

**PRINCETON**  
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Princeton, NJ 08540  
609.375.2253

Director of Environmental Services, Chief Sustainability Officer  
(201) 420-2000 x4000  
94 Washington Street  
Hoboken, NJ 07030  
[jgonzalez@hobokennj.gov](mailto:jgonzalez@hobokennj.gov)

As required by N.J.A.C. 14:4-6.6(i), enclosed for review are the City of Hoboken's draft bidding documents which include: 1) a Request for Proposal and 2) a Supplier Services Agreement. Provided that the municipality is successful at auction on March 17, 2021, the municipality currently anticipates that the government energy aggregation program will be implemented by June 1, 2021.

This government energy aggregation program is limited to residential only for electric; the lead agency estimates that there are 26,576 eligible customers, however, we are currently awaiting updated summary usage data from the Utility & will update that number, if necessary, when received.

Please note - the only change to the attached RFP is the bid schedule, and the only change to the attached SSA is an update to the definition of "flat price (FP)" on page 5, Section 1.01 Definitions, no additional changes have been made to the language in either document since the BPU's last review on April 9, 2020.

Best regards,

*Tara Pasca*

Tara Pasca, CEP  
Manager, Energy Services Government Programs

Enclosure

Copy: Director of the Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, NJ 08625-0350

Director of the Division of Customer Assistance  
Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, NJ 08625-0350

**NOTICE TO VENDORS**  
**PROPOSAL SPECIFICATIONS AND INSTRUCTIONS for**  
**RESIDENTIAL ENERGY AGGREGATION**

Notice is hereby given that pursuant to the New Jersey Public Contracts Law, an online auction will be facilitated for the City of Hoboken ("Municipality"), New Jersey. Submissions shall be made to Concord Energy Services ("CES"), the Energy Agent for the Municipality. All required bid documents shall be made via email to [tpasca@concord-engineering.com](mailto:tpasca@concord-engineering.com). Once vendors are qualified, a second submission through an online bidding platform will be required to identify energy pricing proposals. The date and time of the second submission will be announced to qualifying vendors.

Potential vendors will be furnished with a copy of the Proposal Specifications and Instructions (referred to herein as the "Proposal Specifications") by request to Tara Pasca by email to [tpasca@concord-engineering.com](mailto:tpasca@concord-engineering.com) and by phone at (856) 427-0200.

The award of all municipal contracts is contingent upon the availability of funds; however, it is expected that no outlay of municipal funds will be required for the Program. The right is also reserved to reject any or all proposals or to waive any informalities where such informality is not detrimental to the best interest of the Municipality and the end participants/customers of the Program.

The successful vendor shall be required to comply with the following:

- A. Affirmative Action requirements (P.L. 1975, C.127, N.J.S.A. 10:5-1 et. seq.).
- B. Anti-Kickback Regulations under Section 2 of the Act of June 13, 1934, known as the Copeland Act.
- C. The proposal must be accompanied by a list of names and addresses of all stockholders owning 10% or more of the stock in accordance with the provisions of the Public Disclosure Law (P.L. 1988, C.33, N.J.S.A. 52:25-24.2).
- D. Business Registration Act Registration
- E. Iranian Disclosure Form
- F. Addendum Acknowledgement
- G. Agreement for Provision of Energy Supply Services (attached to specification).

**UPON THE AUTHORITY OF** the City of Hoboken, Hudson County, New Jersey.

Energy Agent,

Tara Pasca, CEP  
Manager, Energy Services Government Programs  
Concord Energy Services

### **Proposal Intent**

The City of Hoboken ("Municipality") is requesting proposals from vendors who are Board of Public Utility licensed electric power suppliers to participate in an Energy Aggregation Program ("Program") for Residential Energy Aggregation. The Program will be administered under the oversight of the Municipality's Energy Agents, Concord Energy Services ("CES") and its subcontractor Commercial Utility Consultants ("CUC"). The Municipality, in coordination with CES, will choose the best vendor for the Program to provide electric generation services, as defined in N.J.A.C. 14:4-1.2, to those residential customers in the participating municipalities that do not opt-out of the Program. This Program is being implemented as an "Option 2" energy aggregation Program pursuant to N.J.A.C. 14:4-6 et seq. As per N.J.A.C. 14:4-6.8(b)3, no listing is provided of government facilities that will be served under the energy aggregation program as this program includes only residential service (RS) accounts.

### **Primary Objectives**

The Municipality's primary objectives in soliciting proposals are to:

- Increase the use of renewable energy consistent with the City of Hoboken's Climate Action Plan
- Select a highly-qualified supplier with the expertise and experience in the administration of a Governmental Energy Aggregation Program.
- Reduce costs to the participating municipality's electric consumers by arranging for bulk purchasing of electricity for residential customers.
- Require that end users will continue to receive a single, utility consolidated bill for the purchase, service and delivery of electricity.

### **Municipal Information**

It is estimated that the participating municipality has approximately 26,576 residential customers which represent approximately 142,212,902 kWh that may be eligible for this Program. Total annual residential load broken down by monthly historical usage for the BGS-RSCP accounts is the only information to be provided after the Supplier provides their Notice of Intent to Bid. Customer information will only be provided to the winning supplier. Pricing for the RS class is the only tariff class for which bids will be accepted, and, further, no other tariff classes will be auctioned pursuant to these bid specifications. The above numbers are estimates only and will vary depending upon the number of residential customers that opt-out. The selected vendor will be provided a list of customers within the participating municipal boundaries after a contract is awarded. These materials are confidential in nature and may never be released either by the vendor or a third party and may only be used for the purposes of this Program. Information pertaining to residential customers who opt-out of the Program shall not be used for any other purpose. Information on Program participants shall be utilized only in the administration of the Program pursuant to N.J.A.C. 14:4-6.3(f).

### **Contract Term**

The Municipality seeks an approved vendor for a twelve (12), fifteen (15) or twenty-four (24) month term for a June 2021 start date. Alternate pricing for other term lengths will also be accepted but shall not exceed twenty-four (24) months. The term shall be selected based on the pricing offered for the specified terms at the time of the auction. The term shall not include the time necessary to set

up the Program. The term shall commence on a specific, to be determined meter reading date and terminate after the selected term consecutive meter reading. The term may be reduced or the contract voided pursuant to the terms of the Agreement for Provision of Energy Supply Services ("Agreement") if the vendor fails to perform any of its obligations under the Agreement.

### **Governing Laws**

This solicitation is made pursuant to the following laws and regulations:

- The Government Energy Aggregation Act of 2003, P.L. 2003, c. 24.
- The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.
- The Local Unit Electronic Technology Pilot Program and Study Act, P.L. 2001, c. 30.
- The Electric Discount and Energy Competition Act, P.L. 1999, c. 23.
- Board of Public Utility Rules and Regulations, N.J.A.C. 14:4-6
- New Jersey Division of Local Government E-Procurement Pilot Program
- The LDC's customer account services master agreement
- The Renewable Energy Requirements under N.J.S.A. 48:3-87 and N.J.A.C. 14:8
- Customer Rights pursuant to N.J.S.A.48:3-85 and N.J.A.C. 14:7

### **Instructions to Potential Vendors**

These Proposal Specifications (and any subsequent addenda) are being issued by the Municipality, with the assistance of its Energy Agents CES and CUC. CES's office is the sole point of contact regarding matters related to proposal procedures. CES shall be responsible for accepting all questions or comments regarding qualifications and request for addenda. CES shall issue addenda regarding all procurement and contractual matters relating to the requirements described in this request and are the only office authorized to change, modify, clarify or rescind the provisions of this request.

On the date specified, potential vendors shall submit a Notice of Intent to Bid to submit qualifications and bid for this Program. The vendor shall use the Notice of Intent form attached hereto. The Notice of Intent provides project specific contact information to help ensure the proper dissemination of any and all notices, addenda and the like concerning this Program.

These Proposal Specifications shall be let in two specific parts. During Part 1, vendor shall seek to be deemed a qualified vendor by the Energy Agent. All vendors deemed qualified shall be invited to participate in Part 2, where the vendors shall submit timely pricing guarantees pursuant to an online energy auction administered by CES and CUC. All rates must be below LDC Benchmark BGS-RSCP rate set forth at the time of the auction or will automatically be deemed non-responsive.

Based on their expertise as the City's Energy Agents, CES and CUC, shall review the qualifications of all potential vendors and determine which vendors shall be qualified to submit pricing under Part 2 of the Proposal Specification process. CES and CUC shall determine if initial proposals are deemed complete and shall provide three (3) business days for a vendor to cure any deficiency. Upon a final notice of non-qualification, a vendor shall have two (2) business days to file an appeal stating with specificity its justification for acceptance into Part 2 of the Program. CES and CUC shall evaluate and make a final determination on the justification.

In evaluating vendor submissions, the following criteria will be considered:

- Board of Public Utilities license approval;
- Submission of required legal documents;
- Responsiveness to Proposal Specifications;
- History and financial strength of the vendor;
- Experience in performing similar energy aggregation Programs;
- Knowledge of all relevant New Jersey rules and regulations, as set forth under “Governing Laws” on page 3 of this document;
- Detail in explaining the vendor’s administration operation of an “opt-out” “opt-in” notification plan;
- Clarity and conciseness of the submittal; and
- Responsiveness to and understanding of the scope of work.

Additional information regarding the evaluation process can be found throughout these Proposal Specifications specification.

**These bid specifications and the information contained within is to be strictly used for the bidding and administration of the program only. Suppliers shall NOT contact the municipality directly and shall not solicit the municipality for any business separate from the energy aggregation program.**

### **Request for Information**

Potential vendors are expected to exercise their best professional independent judgment in analyzing the requirements of these Proposal Specifications to ascertain whether additional clarification is necessary or desirable before responding. If there are any discrepancies in or omissions to the request, or if there are any questions as to any information provided in these Proposal Specifications or by any other source, a request must be submitted in writing, via email to CES on or before the date provided.

**ALL REQUESTS FOR INFORMATION MUST BE IN WRITING OR VIA ELECTRONIC COMMUNICATION. NEITHER THE MUNICIPALITY NOR ENERGY AGENT WILL DISCUSS ASPECTS OF THIS PROJECT OVER THE PHONE.**

### **Dates**

Vendors interested in submitting responses to these Proposal Specifications should do so according to the following schedule. A vendor may be disqualified from further consideration for failing to adhere to the dates and times for performance specified below.

<b>EVENT</b>	<b>June 1, 2021 Start</b>
Proposal Advertisement	February 23, 2021
Deadline for inquiries	March 2, 2021
Notice of Intent to Bid	March 5, 2021
Qualification Proposal due date and time	March 11, 2021
Part 1 - Evaluation of Qualifications	March 11, 2021
Notification of Deficiencies	March 11, 2021

Notice to all potential vendors regarding Acceptance of Qualifications	March 12, 2021
Part 2 – Auction Date- Bid submission	March 17, 2021
Anticipated Award Date – Via NOI	March 17, 2021

Note: the above dates are subject to change.

If the Municipality does not award a contract on the anticipated award date, all vendors' price proposals will be rejected and those who were accepted as qualifying vendors shall be invited to submit new pricing at a specific time and place to supply up-to-date market pricing. Qualifying vendors shall be notified of the date new pricing will be accepted no later than ten (10) days prior to the new auction date.

**The Municipality has agreed in advance to sign the Supplier Agreement within 24 hours of the auction, should the Municipality decide to award a contract.**

### **Proposal Submission Instructions**

Delivery. Part 1, Proposal Format and Required Submittals, shall be submitted via email Tara Pasca at [tpasca@concord-engineering.com](mailto:tpasca@concord-engineering.com). Proposals received after the due date and time indicated above will not be accepted.

Addenda to Proposal Specifications. If necessary, supplemental information in addenda form will be provided to all prospective vendors who have received the original Proposal Specifications. The Municipality and/or its Energy Agents shall not be responsible for failure of any vendor to receive such addenda. All addenda so issued shall become part of this request. Addenda will be in writing and will only be issued by CES's office. Addenda will be identified as such and will be sent via email to all vendors. Addenda withdrawing these Proposal Specifications request or postponing a deadline may be issued any time prior to the submission deadline.

Each vendor shall be responsible for ascertaining, prior to submitting a proposal, that it has received all issued addenda.

### **Response Costs**

All costs incurred in the preparation and submission of any proposal submission and related documentation will be borne solely by the vendor and in no case by the Municipality, program participants, or Energy Agents.

### **Disclosure of Records and Confidentiality of Information**

All information submitted as part of these Proposal Specifications must be open to public inspection except items marked as trade secrets and considered trade secrets under the Open Public Records Act. Should a request be made for public information that has been designated confidential by the vendor and on that basis the Municipality denies release, the vendor will be responsible for all legal fees, costs and expenses necessary to defend such action if the denial is challenged in court or before the Government Records Council.

### **Proposal Modification or Withdrawals**

Prior to the qualification or price proposal receipt dates, a submitted proposal may be modified or withdrawn by notice to CES by emailing Tara Pasca at [tpasca@concord-engineering.com](mailto:tpasca@concord-engineering.com) for receipt of proposals. Such notice shall be in writing and, to be effective, must be received on or before the applicable submission deadline. A withdrawn proposal may be resubmitted up to the proposal opening date and time provided that it then fully complies with the requirements of these Proposal Specifications request.

### **Accuracy of Information**

The Municipality and all of their officers, agents, or employees shall not be responsible for the accuracy of any information provided to any vendor as part of these Proposal Specifications. All vendors are encouraged to independently verify the accuracy of any information provided. The use of any of this information in the preparation of a submission is at the sole risk of the vendor. Vendors are further notified that information provided regarding current potential residential household customers are, in fact, estimates that are subject to change based on uncontrollable conditions, including but not limited to, the opt-in/opt-out options, relocations, changes in business use and independent entry into other energy deregulation Programs.

### **Joint or Partnering Proposals**

A joint proposal, submitted by two or more vendors proposing to participate jointly in performance of proposed work may be submitted. To be considered responsive, any such joint proposal must respond to all the requirements of these Proposal Specifications request. However, a single vendor must be clearly identified as the "Primary Vendor" who will assume primary responsibility for performance of all other joint vendors and all subcontracts to every level. The primary vendors must identify themselves as such and submit the proposal under their company name and signature. If a contract is awarded in response to a joint proposal, the vendor must execute the contract and all partner vendors must verify in writing that the primary vendor is authorized to represent them in all matters relating to the contract. The Municipality assumes no responsibility or obligation for the division of orders or purchases among joint contractors and/or subcontractors.

### **Compliance Requirements**

- A. Comply with equal opportunity laws as required by N.J.S.A. §10:5-31 et seq.
- B. Comply with affirmative action laws as required by P.L.1975c.127 (N.J.A.C. 17:27).
- C. Comply with New Jersey Business Registration Laws as required by P.L. 2004, c.57.
- D. Comply with the Iranian Disclosure Law, N.J.S.A. 40A:11-2.1, P.L. 2012, c. 25.
- E. Comply with any and all successors, amendments, or additions to the above.
- F. Comply with the Act.

The successful vendor shall submit proof of a valid New Jersey Business Registration Certificate for each subcontractor, if any, used in the fulfillment of the contract, or shall attest that no subcontractors will be used.

## **SCOPE**

### **General Overview**

#### **Project Implementation**

The successful vendor is expected to provide a Program for contracting each residential electric user within the participating municipality that is not already contracted with an independent third party energy supplier. For residential customers, the vendor shall provide an "Opt-Out" notification which shall inform the residential customer that it will be automatically included in the Program unless the customer affirmatively options out of the Program by a specified date not earlier than 30 calendar days from the mailing. The vendor shall provide a detailed description of the process it will use as well as a sample residential Opt-Out letter. Further, the vendor shall demonstrate the capabilities of providing an effective and accurate system that will allow residential customers to opt-out via a return letter or postcard, phone call or via the internet. All Program written correspondence shall be mailed First Class. The vendor shall provide a postage paid return envelope or postcard as mechanisms by which residents can opt-out of the Program. All option letters must be consistent with N.J.A.C. 14:4-6.6.

Opt-Out letters must contain a bar code which provides customer account number imbedded in code on the portion of the letter the customer returns. All Opt-Out letters must be pre-approved by CES and CUC prior to mailing. CES and CUC shall provide and approve content for all communications and timing of such communications prior to supplier sending.

All mailings must be sent via USPS First Class mail only. The mailing envelope and enclosed information shall NOT contain supplier's logo, marketing material, and any other information that does not pertain specifically to the Program. Program mailing must contain either a self-addressed, postage paid return opt-out postcard or envelope returnable to the winning supplier or Energy Agents.

Additionally, pursuant to N.J.A.C. 14:4-6.6(r)9, the selected supplier must also provide a GEA Program Summary, in English and Spanish, to be mailed with the official Opt-Out Notice.

Supplier and Energy Agents agree to opt-out of the program any residential customers for whom they receive returned mail.

Once the Program is established, residential customers may relocate or seek alternative electrical purchases. The vendor's submission must detail the administration of current term changes for each of these customers.

Supplier shall not begin enrollment or enrollment process prior to the completion of the 30-day opt-out period. Enrollment process shall not commence without Energy Agents' written approval.

#### **Budget Billing**

The Municipality requires that the selected vendor offer budget billing to residential participants in the Program, particularly those who presently utilize budget billing. To accomplish this task, the vendor agrees that rather than invoicing and collecting monthly charges from a customer equal to monthly metered usage multiplied by the contract price, the supplier will invoice and collect an equal amount each month. In addition, the vendor will maintain the budget balance for the customer and true

it up at least once every 12-months during the contract term and at the end of the Contract Term to ensure that the customer pays for actual electric generation service provided by the supplier. The vendor will need to advise the utility of the budget billing amount that the customer should be billed, and the vendor will maintain the positive or negative balance of the difference between the budget billing billed amount and that which would have been billed if the customer were billed based upon actual usage. Additionally, the selected supplier shall allow for customers to elect the budget billing option at any time and under the same terms and conditions available through the current LDC.

In keeping with N.J.A.C. 14:4-6.10(a)13., the selected supplier shall true-up all accounts subject to budget billing at least every 12-month period during the term of the government energy aggregation program and adjust the budgeted amount so the customer will not have a large reconciliation balance at the end of the term. At the end of the term, the customer shall be provided a final billing which provides a detail of the actual usage versus the budgeted amount. This detail shall be provided either before or not later than the time the charges appear on the LDC's bill. The billing detail shall either be included with the LDC bill or separately mailed to the customer at the Supplier's expense.

### **Schedule**

The schedule for the Project is driven by the Municipality's desire to begin the Program with a start date of **June 1, 2021** after proposal award on **March 17, 2021** and notice to proceed is issued to the successful vendor. It is the Municipality's expectation that the Program will be fully operational by either **June 1, 2021**, and terminate after the selected term consecutive meter reading. See proposed schedule below.

<b>EVENT</b>	<b>June 1, 2021 Start</b>
Anticipated Award Date via Notice of Intent (NOI)	<b>March 17, 2021</b>
Anticipated Execution of Supplier Agreement	<b>March 17, 2021</b>
Mail Opt Out Letter	<b>Last week of March 2021</b>
Opt Out Period Begins	<b>April 1, 2021</b>
Opt Out Period Ends	<b>April 30, 2021</b>
Enrollments Begin	<b>May 2021</b>
LDC Sends Final Letter	<b>Mid May 2021</b>
Meter Readings Begin	<b>June 2021</b>

\*These dates may change upon mutual agreement of the Municipality and Supplier.

## **TERMS AND CONDITIONS**

### **Terms and Conditions/Form of Agreement**

The contents of these Proposal Specifications and any addenda, along with the proposal response from the successful vendor shall be incorporated into the Agreement as appropriate. In addition, the vendor shall be required to enter into the Agreement with each participating municipality. The Agreement is attached hereto for the vendor's review.

### **Participating Municipality's Right to Reject or Modify**

Selection of a proposal may not mean that all aspects of the proposal are acceptable to the participating municipality. The municipality will not negotiate with any potential vendor during the proposal submission and review process. Any vendor attempt to negotiate will be considered an unlawful act and subject the vendor to a rejection of their proposal. This does not include requests for clarification or addenda to these Proposal Specifications or the submission requirements.

### **Terms Included and Order of Precedence**

In submitting a response to these Proposal Specifications request, vendor acknowledges that these Proposal Specifications request, including all appendices and attachments, and including service, financial and Program specifications and terms and conditions may be incorporated in any award issued in response to these Proposal Specifications request. However, in the event of any conflict between the proposal request and the proposal submission, the terms of these Proposal Specifications request shall control and govern any matter set forth therein that is not explicitly modified, added, or deleted by the provisions of the written Agreement between the parties.

### **Conflict of Interest**

The vendor agrees not to hire any officer or employee of the participating municipality to perform any service covered by this Program.

The vendor affirms that to the best of its knowledge there exists no actual or potential conflict between vendor's family, business, or financial interest and the service provided under these Proposal Specifications request, and in the event of change in either private interests or service under this Program, any question regarding possible conflicts of interest which may arise as a result of such change will be raised with the participating municipality. The vendor shall not be in a reporting relationship to any municipal employee who is a relative, nor shall the relative be in a decision-making position with respect to the vendor.

### **Ethics**

Vendors will exercise extreme care and due diligence to prevent any action or conditions which could result in conflict with the best interest of the participating municipality throughout the term of the Agreement resulting from these Proposal Specifications request. Vendors' employees will not accept any employment or engage in any work which creates a conflict of interest with the any municipality or in any way compromises the work to be performed under these Proposal Specifications or the Agreement resulting from these Proposal Specifications. Vendors and its employees will not offer gifts, entertainment, payment, loans, or other gratuities or consideration to any municipal employees, their families, other suppliers, contractors and/or subcontractors, or other third parties for the purpose of influencing such persons to act contrary to any municipality's interest or for personal gain. Vendors will immediately notify any municipality of any and all such violations of this clause upon becoming aware of such violations.

### **Insurance Requirements**

The successful vendor shall, during the term hereof, obtain, maintain, and keep in full force and effect, Commercial General Liability insurance applying to the use and operation of the Program, in the following amounts:

- (i) Commercial General Liability  
Limits: 1,000,000 General Aggregate  
1,000,000 Products & Completed Operations Aggregate  
1,000,000 Each occurrence  
1,000,000 Personal Injury (Advertising Injury excluded)  
50,000 Fire Damage, Any One Fire  
5,000 Medical Payments, Each Person
- (ii) Excess Liability  
Limits: 5,000,000 Aggregate

### **Performance Bond**

The municipality does not require a performance bond for this Program; however, the supplier shall maintain surety bond with the New Jersey Board of Public Utilities.

## **PROPOSAL REQUEST RESPONSE**

### **Proposal Format and Required Submittals**

Vendors are to provide a written response addressing the full scope specified under these Proposal Specifications.

The response shall be submitted in the following format. An individual authorized to extend a formal response must sign the proposal. If a vendor fails to provide any of the following information, the Municipality may, at its sole option, ask the vendor to provide the missing information or may evaluate the response without the missing information. For each section provide as much detail as possible to expedite the process and reduce the possibility of follow-up questions by the Energy Agents.

#### **PART 1:**

Proposals shall include all elements listed below:

#### **Table of Contents**

Proposals shall include a table of contents with page numbers covering all parts including exhibits and addenda, with sufficient detail to facilitate easy reference to all requested information.

#### **Section 1: Company Overview**

This section shall present an introduction and general description of the vendor's background, nature of business activities, and experience. This section should also provide an overview of the project team. This section should substantiate that the vendor is well-qualified

to provide the energy aggregation program to the Municipality's participants. The Company overview should be no more than two (2) pages in length.

## Section 2: Program Overview

This section shall provide a high-level overview of the energy aggregation Program. This shall include a general description of the project scope and a technical summary of the project, including the administration of the project. CES and CUC will be responsible for town outreach meetings and will also facilitate opt-out responses via its call center and electronic opt-out log.

## Section 3: Qualifications

This section shall demonstrate in detail that the company is qualified to perform these services, has done so for other municipal vendors and has a strong working relationship with the Board of Public Utilities on energy aggregation Programs.

## Section 4: Project Team (Optional but recommended)

Describe the proposed Program team, including:

- A. Contact information for the lead of the team responsible for the response submittal.
- B. This person will be contacted with questions and communications regarding the proposal response.
- C. A description of the roles and responsibilities for each team member.
- D. An organizational chart that includes all key project members. Members provided as part of the proposal shall be identified by name and title (and organization if required for clarity). The organizational chart shall include all components of the project from project implementation through monthly billing and customer service.

## Section 5: Project Approach

Describe your approach to Program delivery, including, but not limited to:

- A. The opt-out requirements described herein.
- B. Billing cycles.
- C. Customer Service.
- D. Describe how the vendor will work with customers who currently have or may elect to enjoy budget billing in the future.

## Section 6: Schedule

Provide a schedule for the energy aggregation Program that includes major work streams and milestones. The format should be a list of project activities with start and end dates. The schedule shall be based upon an assumed award date of **March 17, 2021**.

## Section 7: Project Operation

Vendor must describe how the Program will function once operational providing as much detail as possible. CES and CUC will be responsible for town outreach meetings and will also facilitate opt-out responses via its call center and electronic opt-out log.

## Section 8: Past-Project Experience

Provide a list of past energy aggregation programs completed by the team that are similar in scope as that proposed. The description for each project/program shall include:

- A. The project name
- B. Location
- C. Project size (number of customers)
- D. Year completed
- E. Name and contact information of project manager
- F. Name and contact information of client contact
- G. A brief description of any specific challenges and how they were overcome
- H. Review of Project schedule – award date, installation completion date and date of operation

## Section 9. Legal Submission Requirements

Provide the following:

- A. A valid New Jersey Board of Public Utilities Third Party Electric Supplier License
- B. A valid New Jersey Business registration certificate for all corporate partners, providers, contractors and/or subcontractors to be utilized in fulfilling the Program requirements.
- C. Certification that no municipal employees or near relatives own or control more than a ten percent (10%) interest in the vendor's organization. If there are none, provide writing on letterhead to that effect.
- D. Iranian Disclosure Form (attached).
- E. Non-collusion affidavit (attached).

- F. Stockholder certification (attached).
- G. Affirmative Action Questionnaire (attached).
- H. Affirmative Action Language (attached – initial and return.)
- I. Americans with Disabilities Language (attached – initial and return).
- J. Agreement of Provision of Energy Supply Services.

## PART 2:

Upon acceptance of the vendor as a qualifying vendor, a separate sealed submission shall be made at a place, time and location to be determined (see expected schedule) which shall include:

### Section 1: Financial Proposal

Using CUC's proprietary online auction portal, the pricing provided shall include all costs for a twelve (12), fifteen (15) or twenty-four (24) month term for a June 1, 2021 start for the RS tariff class only. Alternate pricing for other term lengths will also be accepted but shall not exceed twenty-four (24) months. One of the objectives in this bid request is to provide residents with delivered electricity prices that are less than the respective Utility's BGS-RSCP Price to Compare ("BGS").

All pricing shall be for 100% full requirements electricity supply and shall include a price per kilowatt-hour for load-following electric energy supply, capacity and capacity performance, transmission to include network integration transmission (NITS) and transmission enhancement charges (TEC), ancillary services, balancing operating reserves, PJM charges and fees, Fees required to comply with state mandated Renewable Portfolio Standards (RPS), Distribution/Transmission losses, supplier margin, energy agent fees, Sales and Use Tax (not New Jersey State sales tax) and any other applicable costs to transmit Electricity to the Delivery Point. All Pricing must be in compliance with New Jersey Renewable Portfolio Standards (RPS). Pricing for Bid Groups and Bid Group Alternates will be accepted as noted below.

**Bid Group 1.** Bidders may submit flat pricing in which the price remains locked in for the entire term.

**Bid Group 1A.** Bidders may submit flat pricing option alternative for **100% enhanced renewable energy product** for electric generation service for all Program Participant accounts. This alternate option for residents is voluntary and residents must Opt-In to this option based on their personal preference for increased renewable energy sources.

**Bid Group 2.** Bidders may submit flat pricing for an **enhanced renewable energy product that is 10% above the prevailing New Jersey Renewable Portfolio Standards with all renewable coming from Class 1 resources located within PJM.** The renewable energy product will consist of a total amount of renewable energy that is 10% greater than the total

amount of renewable energy (Class I, Class II and solar combined) required by virtue of the New Jersey Renewable Portfolio Standard (RPS) in any given RPS compliance year (otherwise referred to as Energy Year or 'EY'<sup>1</sup>), with the additional 10% above and beyond the RPS requirements to be comprised of New Jersey RPS-compliant Class I renewable energy; that is, Class I renewable energy generated within or delivered into the PJM region, consistent with N.J.A.C. 14:8-2.7 (otherwise referred to as 'PJM Class I RECs').

**Bid Group 2A.** Bidders may submit a flat pricing option alternative for Bid Group 2 in which the price remains locked in for the entire term for all Program Participant Accounts that elect to Opt-In to this alternate option. The pricing will not include additional renewable energy sources other than the prevailing New Jersey Renewable Portfolio Standards (RPS) in any given RPS compliance year (otherwise referred to as Energy Year or 'EY'<sup>1</sup>). This alternate option for residents is voluntary and residents must Opt-In to this alternate option based on their personal preference to not increase the percentage of renewable energy sources.

**Bid Group 2B.** Bidders may submit flat pricing option alternative for **100% enhanced renewable energy product** for electric generation service for all Program Participant accounts. This alternate option for residents is voluntary and residents must Opt-In to this option based on their personal preference for increased renewable energy sources.

**Bid Group 3.** Bidders may submit flat pricing for an **enhanced renewable energy product that is 20% above the prevailing New Jersey Renewable Portfolio Standards with all renewable coming from Class 1 resources located within PJM.** The renewable energy product will consist of a total amount of renewable energy that is 20% greater than the total amount of renewable energy (Class I, Class II and solar combined) required by virtue of the New Jersey Renewable Portfolio Standard (RPS) in any given RPS compliance year (otherwise referred to as Energy Year or 'EY'<sup>1</sup>), with the additional 20% above and beyond the RPS requirements to be comprised of New Jersey RPS-compliant Class I renewable energy; that is, Class I renewable energy generated within or delivered into the PJM region, consistent with N.J.A.C. 14:8-2.7 (otherwise referred to as 'PJM Class I RECs').

**Bid Group 3A.** Bidders may submit a flat pricing option alternative for Bid Group 3 in which the price remains locked in for the entire term for all Program Participant Accounts that elect to Opt-In to this alternate option. The pricing will not include additional renewable energy sources other than the prevailing New Jersey Renewable Portfolio Standards (RPS) in any given RPS compliance year (otherwise referred to as Energy Year or 'EY'<sup>1</sup>). This alternate option for residents is voluntary and residents must Opt-In to this alternate option based on their personal preference to not increase the percentage of renewable energy sources.

**Bid Group 3B.** Bidders may submit a flat pricing option alternative for **100% enhanced renewable energy product** for electric generation service for all Program Participant accounts. This alternate option for residents is voluntary and residents must Opt-In to this option based on their personal preference for increased renewable energy sources.

**Enhanced Renewable Energy Verification Process**

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<sup>1</sup> Under the NJ RPS, each compliance year or EY runs from June 1<sup>st</sup> through the following May 31<sup>st</sup>.

The selected supplier(s) shall provide a summary report with verification information to the Municipality and its Consultants, no more frequently than annually, and no sooner than 90 days after the end of a compliance year, upon request, within ten (10) business days of receipt of such request to provide a short report on an annual basis with the above information.

Pricing for each LDC shall be submitted as noted below:

Public Service Gas & Electric ("PSE&G")

Additionally, any administrative reimbursements to the municipality for program costs, shall be disregarded for purposes of comparing the Flat Price and the Price to Compare.

Pursuant to N.J.A.C 14:4-6.8(d), Administrative Fees for the Municipality to be reimbursed for out-of-pocket costs actually incurred, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the Municipality. The fees may be for attorney review, outreach costs including, but not limited to printing of and postage for materials specific to the energy aggregation program. The Municipality may NOT allocate employee costs to the program or require Supplier to pay costs associated with these employees such as salaries, benefits, etc.; this is not permitted. The administrative fees, not to exceed \$2,000.00, shall be reimbursed within thirty (30) days after actual invoices and/or vouchers are provided to Supplier for reimbursement.

**CES and CUC will also accept alternative pricing options and terms that the supplier recommends based off their pricing options and model.** Per N.J.A.C 14:4-6.9 (c), the pricing structure may allow for fluctuations in price during the life of the contract. Suppliers shall not represent the rate as "fixed" or "firm" if fluctuations are part of the pricing model. However, the pricing structure shall not be changed without written notice to the customers per N.J.A.C. 14:4-6.11(a) nor shall it ever be above the BGS-RSCP Price to Compare.

The price shall include a per kilowatt-hour for load-following energy supply, capacity, transmission, ancillary services, line losses, renewable portfolio standards compliance costs, energy agent fees, supplier margins and any other applicable fees, costs or taxes. The user will be responsible for 6.625% New Jersey Sales and Use Tax. Said taxes will be adjusted at a rate consistent with state law should the rate rise or fall during the term of the Agreement.

In the event that the BGS-RSCP **energy only** tariff price decreases below the Contract Price during the term of the Agreement, this Agreement shall not terminate; provided, however, that the municipality may advise participants of this development and of their right to opt-out of the program.

As full payment for all services provided by the Energy Agents solely with regard to the establishment of an online auction for the selection of a third-party energy supplier, the Supplier shall pay to the Energy Agents in accordance with the terms in the Agreement between Supplier and the Energy Agents.

The Municipality has retained CES and CUC to assist in procuring Electricity Supply Service for the Program Participants. The Supplier must enter into a separate agreement with

CES and CUC unless a broker agreement already exists between the Supplier and the Energy Agents, whereby the Supplier will pay CES and CUC a fee of **\$0.0015/kWh** of electricity usage by the Program Participants during the term of the agreement. Payments will be made on a monthly basis to the Energy Agents from Supplier, automatically, once supplier calculates aggregated usage from Program Participants. All bid prices must be inclusive of the Energy Agent Fee payable to CES and CUC.

The Supplier shall also reimburse Energy Agents a one-time fee of \$2.00 per eligible BGS-RSCP residential service (RS) account as identified by the LDC, for costs associated with the outreach program such as town hall meetings, advertising, and handout materials needed in order to educate Program Participants. This fee shall be paid sixty (60) days after the enrollment of eligible BGS-RSCP residential service (RS) accounts with the Supplier.

### Section 2: Bid Comparison and Award Notification

At the close of the auction, only those bids below the BGS-RSCP tariff rate will be considered, excluding the enhanced renewable energy pricing option. The following criteria will be used to evaluate the TPS bids and will be provided to the Municipality with quote comparisons against the current average BGS-RSCP tariff rate. This evaluation will be based on the following calculation based on the historical usage over the term:

Savings Per TPS Bid Price (excluding enhanced renewable energy pricing option) =  
(BGS-RSCP Tariff rate x Residential Bid Group Historical Usage in kWh) – (TPS's  
Bid Price x Residential Bid Group Historical Usage in kWh.

Pursuant to N.J.A.C. 14:4-6.8, the lowest TPS's bid over the term may be selected as the winning supplier bid based on the above criteria. The alternative pricing options may be considered by the Municipality if the optional pricing produces the lowest bid and highest savings, per kWh for the BGS-RSCP rate class, as well as protection to the Program Participants versus the BGS-RSCP rate.

The winning supplier shall be supplied with a Letter of Intent to award the contract by the Municipality by 4:00 p.m. on **March 17, 2021**, prevailing time until a Supplier Services Agreement can be executed with the winning supplier.

### PART 3:

An Agreement must be made with the Municipality and the Supplier. It is anticipated that the Municipality will have the executed Agreement back to Energy Agent within one (1) business day of the auction date.

### Note: Contract Extensions and/or Renewals

At any time during this contract, the Municipality may determine that it is in the best interest of the Program members to extend the contract for an additional term in accordance with Section 2.01 of the Agreement. Any extension and/or renewal shall be predicated on the reasonable expectation that the Contract Price of electricity supply service will be less than the respective utility's BGS-RSCP rate.

In the event that the Municipality determines that market conditions are favorable for extending the contract, the Municipality shall solicit from the Supplier an offer to extend the contract with a new electricity supply pricing. The Supplier's offer to extend the contract shall be in writing and must indicate the time period for which the electricity supply price offered is valid. If it is deemed favorable to proceed with the contract extension and/or renewal, the Municipality shall request that the Supplier purchase electricity for the extension and/or renewal period in accordance with Section 2.01 of the Agreement. An addendum with new pricing/term shall be presented to the Municipality for signature.

Any resulting change in the original supply price shall be sent to all participating program residents in writing no later than 60 days prior to the effective extension and/or renewal rate date. All notifications must be approved by the Municipality and the Energy Agents prior to distribution by the Supplier.

## STOCKHOLDER DISCLOSURE CERTIFICATION

N.J.S.A 52:25-24.2 (P.L. 1977 c33)

Failure of the bidder/respondent to submit the required information is cause for automatic rejection.

**Legal Name of Bidder:** \_\_\_\_\_

- ☐ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.
- ☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Partnership         | <input type="checkbox"/> Corporation                   | <input type="checkbox"/> Sole Proprietorship           |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Limited Liability Partnership |
|  | <input type="checkbox"/> Subchapter S Corporation      |  |

Complete if the bidder/respondent is one of the 3 types of Corporations:

Date Incorporated: \_\_\_\_\_ Where Incorporated: \_\_\_\_\_

**Business Address:**

Street Address	City	State	Zip
Telephone #		Fax #	

Listed below are the names and addresses of all stockholders, partners or individuals who own ten (10) percent or more of its stock of any classes, or who owns ten (10) percent or greater interest therein. Sign and notarize the form below, and, if necessary, complete the stockholder list below.

Stockholders:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Address: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
(Affiant)

(Notary Public)

\_\_\_\_\_  
(Print name & title of affiant)

My Commission expires:

(Corporate Seal)

## NON-COLLUSION AFFIDAVIT

I, \_\_\_\_\_ of the City of \_\_\_\_\_ in the County of \_\_\_\_\_, and State of \_\_\_\_\_ of full age, being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_  
(NAME)

the vendor making the Proposal for the above named project, and that I executed the said Proposal with full authority so to do; that said vendor has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said Proposal and in this affidavit are true and correct, and made with full knowledge that the Municipality relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, except bonafide employees or bonafide established commercial or selling agencies maintained by \_\_\_\_\_ (Name of Contractor) (N.J.S.A. § 52:34-15).

\_\_\_\_\_  
*Print name of affiant under signature*

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public of

My commission expires \_\_\_\_\_

## **DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

**Proposer:** \_\_\_\_\_

Pursuant to Public Law 2012, c. 25, and N.J.S.A. 40A:11-2.1, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that the person or entity, or one of the person or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran. If the Director finds a person or entity to be in violation of the principles which are the subject of this law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the person or entity.

**I certify, pursuant to Public Law 2012, c. 25, and N.J.S.A. 40A:11-2.1, that the person or entity listed above for which I am authorized to submit a proposal:**

( ) is not providing goods or services of \$20,000,000 or more in the energy sector of Iran, including a person or entity that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran,

**AND**

( ) is not a financial institution that extends \$20,000,000 or more in credit to another person or entity, for 45 days or more, if that person or entity will use the credit to provide goods or services in the energy sector in Iran.

**In the event that a person or entity is unable to make the above certification because it or one of its parents, subsidiaries, or affiliates has engaged in the above-referenced activities, a detailed, accurate and precise description of the activities must be provided in part 2 below to the Municipality under penalty of perjury. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.**

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN**

**You must provide a detailed, accurate and precise description of the activities of the proposer, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.**

Name: \_\_\_\_\_ Relationship to Proposer: \_\_\_\_\_

Description of Activities: \_\_\_\_\_  
\_\_\_\_\_

Duration of Engagement: \_\_\_\_\_ Anticipated Cessation Date: \_\_\_\_\_

Proposer Contact Name: \_\_\_\_\_ Contact Phone Number: \_\_\_\_\_

**Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the Municipality is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Municipality to notify the Municipality in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the Municipality and that the Municipality at its option may declare any contract(s) resulting from this certification void and unenforceable.**

Full Name (Print): \_\_\_\_\_ Signature: \_\_\_\_\_

**SUBCONTRACTOR CERTIFICATION FORM**

If awarded the Program, the undersigned vendor will enter into subcontracts with the following subcontractors. For each subcontractor listed, a valid Business Registration Certificate must also be submitted.

[ ] No subcontractors used on these Proposal Specifications.

Contractor	Address	Purpose for Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
(TITLE)

## AFFIRMATIVE ACTION QUESTIONNAIRE ON PROCUREMENT AND SERVICE CONTRACTS

Vendor shall complete this questionnaire. In the event that you or your firm is awarded this Program, the necessary forms will be sent to you; this form, with information below, **MUST** be submitted with the vendor's proposal:

A. Within seven (7) days after receipt of the notification of intent to award the Program or receipt of the Agreement, whichever is sooner, a procurement contractor should present one of the following to the Municipality.

(A) An existing federally approved or sanctioned affirmative action Program.

(B) A Certificate of Employee Information Report Approval.

(C) If the contractor cannot present "A" or "B", the contractor is required to submit a completed Employees Information Report (Form AA302). This form will be made available to the successful vendor by CUC.

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The following questions must be answered by all contractors.

1. Do you have a federally approved or sanctioned Affirmative Action Program?

YES \_\_\_\_\_ NO \_\_\_\_\_

(A) If yes, please submit a photocopy of such certificate.

2. Do you have a State Certificate of Employees Information Report approval?

YES \_\_\_\_\_ NO \_\_\_\_\_

(A) If yes, please submit a photocopy of such certificate.

3. Have you completed Employees Information Report (Form AA302)?

YES \_\_\_\_\_ NO \_\_\_\_\_

(A) If yes, please submit appropriate copy of such form.

The undersigned contractor certifies that he is aware of the commitment to comply with the requirements of P.L. 1975, c. 127 (N.J.A.C. 17:27) and agrees to furnish the required documentation pursuant to the law.

COMPANY: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**NOTE:** A contractor's proposal must be rejected as nonresponsive if a contractor fails to comply with the requirements of P.L. 1975, c. 127 (N.J.A.C. 17:27).

MANDATORY AFFIRMATIVE ACTION LANGUAGE  
PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS  
P.L. 1975, c. 127 (N.J.A.C. 17:27)

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17-27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that a personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

Vendor Initials: \_\_\_\_\_ Date: \_\_\_\_\_

**AMERICANS WITH DISABILITIES ACT OF 1990**  
**Equal Opportunity for Individuals with Disability**

The CONTRACTOR and the OWNER do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U. S. C. S 12 101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, Programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the OWNER pursuant to this contract, the CONTRACTOR agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this- contract, the CONTRACTOR shall defend the OWNER in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the OWNER, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The CONTRACTOR shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the OWNER grievance procedure, the CONTRACTOR agrees to abide by any decision of the OWNER which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the OWNER or if the OWNER incurs any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the CONTRACTOR shall satisfy and discharge the same at its own expense.

The OWNER shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONTRACTOR along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the OWNER or any of its agents, servants, and employees, the OWNER shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading, or other process received by the OWNER or its representatives.

It is expressly agreed and understood that any approval by the OWNER of the services provided by the CONTRACTOR pursuant to this Program will not relieve the CONTRACTOR of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the OWNER pursuant to the terms herein.

It is further agreed and understood that the OWNER assumes no obligation to indemnify or save harmless the CONTRACTOR, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of any agreement between the OWNER and the CONTRACTOR. Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR'S obligations assumed in any agreement between the OWNER and the CONTRACTOR, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the OWNER from taking any other actions available to it under any other provisions of any agreement between the OWNER and the CONTRACTOR, or otherwise at law.

Vendor Initials: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF HOBOKEN  
FORM OF PROPOSAL**

The undersigned, as a qualified vendor, declares that it has carefully examined the Proposal Specifications and is familiar with the work to be supplied and will administer the Energy Aggregation Program for the term at the rates identified herein.

The 100% full requirements electric supply prices supplied shall include a per kilowatt-hour for load-following energy supply, capacity, transmission, ancillary services, PJM fees, line losses, renewable portfolio standards compliance costs, energy agent fees, supplier margins and any other applicable fees, costs or taxes. The user will be responsible for 6.625% New Jersey Sales and Use Tax. Said taxes will be adjusted at a rate consistent with state law should the rate rise or fall during the term of the contract. All bid pricing shall include the Energy Agent fee of \$0.0015/kWh.

**PROPOSAL PRICING SHALL BE SUBMITTED THROUGH CUC'S PROPRIETARY ON LINE AUCTION PLATFORM ON THE DATE OF THE AUCTION. THE PRICING SHALL BE SUBMITTED PER THE FOLLOWING TARIFF CLASSES:**

**Price per kWh**

**Residential:**

**Tariff Class:**

**- RS CLASS ONLY**

**\*All rates must be below the LDC's Basic Generation Service (BGS-RSCP) Fixed Price Tariff for each participating municipality or the bid will be deemed non-responsive.**

The vendor acknowledges that it will be submitting its bid through an online auction at such date and time established by Concord Energy Services and Commercial Utility Consultants, Inc.

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

## NOTICE OF INTENT TO BID

**Submit to:** Tara Pasca at Concord Energy Services. by email to [tpasca@concord-engineering.com](mailto:tpasca@concord-engineering.com).

By submitting this Notice of Intent, \_\_\_\_\_ ("Supplier") hereby confirms that it is interested in participating in the prequalification and online auction process for the City of Hoboken, New Jersey.

To that end, the Supplier requests that all communications, addenda and notices be sent directly to its representative for this program as indicated in the below contact points.

By submitting this Notice of Intent, the Supplier understands that it is under no obligation to submit a proposal or participate in the auction should the Supplier ultimately be qualified by the Municipality's agent, but simply provides this Notice of Intent to confirm all points of contact throughout the process. The Supplier understands that should the contact information change, it has a continuing obligation to update the information with Concord Energy Services and Commercial Utility Consultants, Inc.

Supplier Name: \_\_\_\_\_

Supplier Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Submitting Information

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**AGREEMENT FOR PROVISION OF  
ELECTRICITY GENERATION SUPPLY SERVICES FOR  
RESIDENTIAL GOVERNMENT ENERGY AGGREGATION**

By and Between

*the City of Hoboken  
in the County of Hudson, New Jersey*

and

**SUPPLIER**

Dated **TBD**

**AGREEMENT FOR PROVISION OF  
ELECTRICITY GENERATION SUPPLY SERVICES FOR RESIDENTIAL  
GOVERNMENT ENERGY AGGREGATION**

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This AGREEMENT FOR PROVISION OF ELECTRICITY GENERATION SUPPLY SERVICES made this **XX** day of **MONTH, 2021** ("Agreement") is by and between the City of Hoboken ("Municipality"), in the County of Hudson, New Jersey, a public body corporate and politic of the State of New Jersey (the "Municipality") and **Supplier** (the "Supplier") (License # **XXX-XXXX**).

WITNESSETH:

*WHEREAS*, pursuant to New Jersey's Government Energy Aggregation Act of 2003 (N.J.S.A. 48:3-92 - N.J.S.A. 48:3-95) and the New Jersey Board of Public Utilities ("BPU") implementing regulations (N.J.A.C. 14:4-1 *et seq.*), as amended (collectively, the "Act"), the Municipality has determined to undertake a Residential Governmental Energy Aggregation Program (as defined herein) charged with the responsibility for adopting and providing for the implementation of such Residential Governmental Energy Aggregation Program within the geographic boundaries of the Municipality ("Program"); and

*WHEREAS*, pursuant to the Program, the Municipality's Council will enter into a written contract for the provision of Electricity Generation Supply Service on behalf of residential customers within its geographic boundaries which will replace such customers current default electricity basic generation service ("BGS") provided through the local electric distribution utility; and

*WHEREAS*, on May 2, 2018, the Municipality's Council has adopted an ordinance formalizing its intent to commence the Program on behalf of all of the residential energy customers of the Municipality that do not opt-out of the Program in accordance with the Act and pursuant to the Act; and

*WHEREAS*, the Municipality and its duly appointed Energy Agents (as defined herein) engaged in a procurement process to obtain a third-party supplier of energy, duly licensed by the BPU, to implement the Program; and

*WHEREAS*, on DATE, the Municipality issued a Request for Proposals ("RFP") for Third-Party Energy Supplier pursuant to the Act; and

*WHEREAS*, based upon the Supplier's response to the RFP, dated DATE, the Municipality has determined that the Supplier possesses the minimum acceptable financial, technical and administrative qualifications including, but not limited to, any and all required authorizations to operate within the Public Service Gas and Electric ("PSE&G") Local Distribution Area, necessary to provide energy supply services, and thereafter designated the Supplier as a qualified vendor; and

*WHEREAS*, after the Municipality's evaluation of all of the proposals submitted by qualified vendors in response to the RFP, has determined that the Supplier's proposal serves the interests of the Municipality and has resolved to recommend award of a contract for such services to the Supplier; and

WHEREAS, the Municipality and the Supplier now desire to enter into this Agreement for the supply of electricity generation supply services all in accordance with the terms and conditions of the Act, the RFP and this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties intending to be legally bound agree as follows:

## ***SECTION I - GENERAL***

### ***1.01 Definitions***

As used in this Agreement, the terms set forth below in this Section shall have the meanings indicated:

"The Act" shall mean the New Jersey Government Energy Aggregation Act of 2003 (N.J.S.A. 48:3-92 - N.J.S.A. 48:3-95) and the New Jersey Board of Public Utilities ("BPU") implementing regulations (N.J.A.C. 14:4-6 *et seq.*).

"Agreement" shall mean this Agreement for Provision of Electricity Generation Supply Services by and between the Municipality and the Supplier and any amendments and supplements hereto made in accordance with the terms hereof.

"Applicable Laws" shall mean any and all federal, state or local statutes, laws, ordinances, rules, regulations, court decisions, directives, orders or similar mandates of any Government Agency that relate to, govern, control or pertain to the performance of any of the rights and obligations of either Party under this Agreement including, but not limited to: (i) the Act; (ii) the Board of Public Utility's rules in N.J.A.C. 14.4 as they relate to a TPS; (iii) the Consumer Protection Standards in N.J.S.A. 48:3-85 and N.J.A.C. 14:7; (iv) the environmental disclosure requirements in N.J.S.A. 48:3-87; and (v) regulations regarding renewable energy and energy efficiency in N.J.A.C. 14:8-1 *et seq.*

"Basic Generation Service" or "BGS-RSCP" shall mean, pursuant to N.J.A.C. 14:4-1.2, Electric Generation Service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the BPU.

"BGS Flat Price Guarantee" shall mean that in the event the BGS-RSCP energy supply only tariff price decreases during the term of this Agreement and is less than the Supplier's contract rate, then the Supplier will have the option of adjusting the flat \$0.XXXX/kWh Contract Price at least equal to or below the decreased BGS-RSCP energy supply only tariff price or transfer Program accounts to the respective LDC prior to the meter read date of the anticipated decrease, in accordance with LDC switching protocols.

"BPU" shall mean the New Jersey Board of Public Utilities.

*"Contract Price"* shall be for 100% full requirements electricity supply and shall include a price per kilowatt-hour for load-following electric energy supply, capacity and capacity performance, transmission to include network integration transmission (NITS) and transmission enhancement charges (TEC), ancillary services, balancing operating reserves, PJM charges and fees, Fees required to comply with state mandated Renewable Portfolio Standards (RPS), Distribution/Transmission losses, supplier margin, energy agent fees, Sales and Use Tax (not New Jersey State sales tax) and any other applicable costs to transmit Electricity to the Delivery Point, and is in compliance with RPS standards as set pursuant to an online energy auction operated by the Energy Agents on DATE. The Participant will be responsible for 6.625% New Jersey Sales and Use Tax which shall be included in the supply price. Said taxes will be adjusted at a rate consistent with state law should the rate rise or fall during the term of this Agreement.

*"Contract Commencement Date"* shall have the meaning set forth in Section 2.01 hereof.

*"Contract Term"* has the meaning set forth in Section 2.01 of this Agreement.

*"Customer Information"* shall mean information specific to a particular residential customer, which a Party has acquired or developed in the course of providing services under this Agreement. This term includes, but is not limited to, a residential customer's name, address, telephone number, usage habits or history, peak demand and payment history.

*"Delivery Point"* shall mean each point on the PJM transmission grid identified by the Electric Distribution Company where Electricity is delivered by the Supplier.

*"Electric Distribution Company" or "EDC"*, pursuant to N.J.A.C. 14:4-1.2, means an electric public utility as defined herein. An EDC cannot be an electric power supplier, but may provide basic generation service.

*"Electric Generation Service"* shall mean, pursuant to N.J.A.C. 14:4-1.2, the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

*"Electric Public Utility"*, pursuant to N.J.A.C. 14:4-1.2, means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end users in New Jersey.

*"Energy Agent"* shall mean, pursuant to N.J.A.C. 14:4-1.2, a person that is registered with the Board pursuant to N.J.A.C. 14:4-5, and is thereby authorized to arrange the retail sale of electricity, electric related services, gas supply or gas related services between government or private aggregators and electric or gas power suppliers, but does not take title to the electricity or gas sold. For purposes of this Agreement, the Energy Agents shall be Commercial Utility Consultants ("CUC") and its subcontractor Concord Energy Services ("CES").

*"FERC"* means Federal Energy Regulatory Commission or any successor agency.

*"Flat Price (FP)"* shall mean the rate provided by the Supplier to be a flat, non-variable rate per kWh which includes all pricing components that is locked in for the term of the contract.

*"Government Agency"* shall mean, as appropriate, any one or several of, any court of competent jurisdiction, the United States of America, the State of New Jersey or any municipality or other political subdivision thereof which exerts competent jurisdiction over the Municipality or the Supplier, or any local, state or federal agency, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the Municipality or the Supplier.

*"kWh"* shall mean kilowatt-hours, or 1,000 watt-hours of electric energy consumption as measured by the LDC meter.

*"Local Distribution Company" or "LDC"* shall mean an electric public utility, as defined in the Act and noted herein. For purposes of the Program, Jersey Central Power & Light Company shall serve as the LDC(s). Pursuant to the Act, an LDC cannot be an electric power supplier, but may provide basic generation service.

*"Municipality"* shall mean the City of Hoboken, County of Hudson, New Jersey, a public body corporate and politic of the State of New Jersey, and its permitted successors and assigns.

*"NITS"* shall mean Network Integration Transmission Service provided by PJM to transport electric energy from the point of generation to the Delivery Point.

*"NITS Charges"* shall mean the tariffs for NITS approved by the FERC and implemented and assessed by PJM on load in the applicable EDC transmission zone, including any applicable surcharges such as Reliability Must Run charge and transmission enhancements, and net of any applicable credits.

*"Participants"* shall mean, collectively, the BGS-RSCP residential service (RS) accounts who are participating in the Program as such term is used in the Act.

*"Party" or "Parties"* shall mean the Municipality and/or the Supplier, as applicable.

*"PJM"* shall mean the PJM Interconnection, LLC, the regional transmission organization that coordinates the movement of wholesale electricity in a specified region.

*"Program"* shall mean a government energy aggregation program authorized and carried out in accordance with the Act.

*"Residential Accounts"* has the meaning set forth in Section 3.01(A) of this Agreement;

*"Supplier"* means Supplier, a NJBPU Licensed Energy Generation Supplier, and its permitted successors and assigns.

*"Third Party Supplier" or "TPS"*, otherwise referred to in the Act as an "electric power supplier", means, pursuant to N.J.A.C. 14:4-1.2, a person that is licensed by the BPU to offer, and to assume the contractual and legal responsibility to provide, Electric Generation Service for use by retail customers. This term includes, but is not limited to, load serving entities, marketers and brokers that offer or provide Electric Generation Service for use by retail customers. An electric

power supplier generates electricity or buys electric generation, and sells it to others for use by retail customers. An electric public utility that provides Electric Generation Service only for the purpose of providing basic generation service is not an electric power supplier or Third Party Supplier.

### *1.02 Binding Obligations*

The Parties agree that upon execution of this Agreement, it shall be in full force and effect and shall be binding upon the Parties notwithstanding any required approval of this Agreement by Government Agencies.

## ***SECTION II - TERM OF THE AGREEMENT***

### *2.01 Commencement, Duration of Term and Rate*

The term of this Agreement ("Contract Term") shall commence on DATE (the "Contract Commencement Date"), and shall continue from that date until XX months, or until such time that the term of this Agreement is extended or terminated earlier in accordance with the provisions of this Agreement ("Contract Termination Date"). Provision of Electric Generation Services, as defined in N.J.A.C. 14:4-1.2, shall be provided for the period commencing on the first meter read following the Contract Commencement Date and ending on the meter read date immediately following the Contract Termination Date.

The contract rate for the term is:

**\$0.XXXXX/kWh per Bid Group XX** for eligible Public Service Gas and Electric (PSE&G) BGS-RSCP residential service (RS) customers only.

The contract rate includes the following alternate options: **(include one or both options depending on Bid Group chosen at time of award)**

- ☐ 100% Enhanced Renewable Energy Option for Bid Group 1A, Bid Group 2B or Bid Group 3B – Residents will have the ability to opt-in to an enhanced renewable energy option at **\$0.XXXX/kWh** in addition to Bid Group 1, Bid Group 2 or Bid Group 3 Flat Price option. This alternate option for residents is voluntary and residents must Opt-In to this alternate option based on their personal preference to increase the percentage of renewable energy sources.
- ☐ Residents will have the ability to opt-in to the flat pricing alternate option for **Bid Group 2A or Bid Group 3A at \$0.XXXX/kWh** which does not include additional renewable energy sources other than the prevailing New Jersey Renewable Portfolio Standards (RPS) in any given RPS compliance year (otherwise referred to as Energy Year or 'EY'<sup>1</sup>). This alternate option for residents is voluntary and residents must Opt-

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<sup>1</sup> Under the NJ RPS, each compliance year or EY runs from June 1<sup>st</sup> through the following May 31<sup>st</sup>.

In to this alternate option based on their personal preference to not increase the percentage of renewable energy sources.

Additionally, any administrative reimbursements to the Municipality for program costs, shall be disregarded for purposes of comparing the Flat Contract Price and the LDC BGS-RSCP tariff price.

Supplier agrees to provide notice to all Program Participants at least sixty (60) days prior to the end of the Electric Generation Service in accordance with the original Contract Termination Date and, when applicable, any consecutive government energy aggregation program Contract Termination Dates, informing Participants of the date upon which the Electric Generation Service term ends. Pursuant to N.J.A.C. 14:4-6.10(a)12, Supplier shall transfer all residential accounts to the BGS service provided through the respective LDC by the first meter read after the applicable Contract Termination Date, and Supplier will provide the Municipality with a final Participant list, in Microsoft Excel format. Customers will at all times remain served through Jersey Central Power & Light Company, their LDC, whether their electricity is supplied by the selected TPS or BGS.

The Parties may renew this Agreement, as follows:

- A. The Municipality adopts a resolution to renew this Agreement, and the resolution includes a finding by the Municipality that the services are being performed in an effective and efficient manner, and that the extension and/or renewal agreement will provide the Program Participants with savings relative to applicable BGS-RSCP;
- B. Any price change included as part of the extension and/or renewal term will be negotiated to provide the Program Participants with savings relative to applicable BGS-RSCP;
- C. Prior to the commencement of any Program extension and/or renewal, in accordance with N.J.A.C. 14:4-6.11(a), Program Participants shall be promptly notified in writing of the extension and/or renewal terms including effective dates and any changes in pricing; further, Program Participants will be given thirty (30) days in which to opt-out of the extension and/or renewal Program;
- D. The terms and conditions of the Agreement remain substantially the same;
- E. In accordance with N.J.S.A. 40A:11-15, the Agreement is not extended so that it runs for more than a total of five (5) consecutive years.

### ***SECTION III – SERVICES TO BE PROVIDED BY THE SUPPLIER***

#### ***3.01 Electric Generation Supply Services to Be Provided by Supplier***

The Supplier shall be responsible for scheduling all Electric Generation Supply Services, as defined herein and in N.J.A.C. 14:4-1.2, required by the Participants including any necessary distribution or transmission authorizations. Suppliers' obligations shall include, but not be limited to, additional services and PJM administration fees and related services. Such Electric Generation Services must be uninterruptible and available to Participants at all times during the Contract Term. All responsibilities of the Supplier herein stated shall be subject to the requirements, rules and tariffs implemented by the LDC and PJM. Supplier acknowledges that it will not supply an insufficient amount of Electric Generation Service other than for an Uncontrollable Circumstance as defined herein.

Supplier agrees that in no event shall it cease to deliver a sufficient level of Electric Generation Service, subject to the terms and conditions herein and the LDC tariffs, to the LDC on behalf of the Participants upon less than thirty (30) days' notice to the Participants, except pursuant to a directive from the BPU staff pursuant to N.J.A.C. 14:4-5. In the event that Supplier is unable to supply the required Electric Generation Services, it shall be subject to damages equal to the difference between the price of Electric Generation Service provided by Supplier as calculated in Section 5.01(A) and the price paid by the each Participant for Electric Generation Services from an alternative source, not to be limited to but also include the currently applicable LDC BGS-RSCP tariff price and damages for associated costs, if any, incurred by each customer in having to switch to an alternative source. Such difference shall be multiplied by the energy usage of the Participants measured in kWh for the remainder of the Contract Term.

#### **A. Residential Customers to Be Included in the Program**

Residential customers that: (i) are located within the geographic boundaries of the Municipality; (ii) are not being served by a Third-Party Supplier; and (iii) have not elected to opt-out of the Program via mail, telephone call or internet response, pursuant to N.J.A.C. 14:4-6.6(t), shall be deemed to be included in the Program ("Residential Accounts").

The names of all BGS-RSCP residential service (RS) accounts shall be submitted to the LDC for approval to participate in the Program. Supplier agrees to provide a notice to all accepted Residential Accounts notifying them that Supplier has been selected to provide electric generation supply services and that the Residential Account will have a minimum of thirty (30) calendar days from the date of such notice to contact the Supplier or Energy Agents to opt-out pursuant to N.J.A.C. 14:4-6.6(q)-(u). The notice shall additionally state that a customer may opt-out of the program at any time, with no penalty pursuant to N.J.A.C 14:4-6.3(k).

#### **B. Residential Customers Ability to Opt-Out of the Program After Commencement**

Each Residential Account shall be permitted to opt-out of the Program by providing thirty (30) days prior notice to the Supplier without penalty. Upon receipt of such

notice, the Supplier will return the Residential Account to the LDC BGS-RSCP effective as of the first meter read date that is at least thirty (30) days from the date of receipt of notice.

Furthermore, a Residential Account shall be permitted to withdraw at any time without penalty. Upon receipt of such notice, the Supplier will return the Residential Account to the LDC BGS-RSCP effective as of the first meter read date that is at least thirty (30) days from the date of receipt of notice.

C. No Guarantee as to Number of Participants

The Municipality makes no guaranties as to the number of Participants that will take part in the Program at any point during the Contract Term.

D. Undeliverable Mail

Supplier and Energy Agents agree to opt-out of the program any residential customers for whom they receive returned mail.

*3.02 Compliance with Applicable Laws*

The Supplier shall perform all electric generation supply services in full compliance with all Applicable Laws including, but not limited to, the Act, as well as the LDC's customer account services master agreement. The Supplier shall obtain and maintain all required permits, licenses and approvals that are required to serve as a third-party electricity supplier for the entire Contract Term.

The Supplier shall provide the Municipality: (1) immediately upon receipt thereof, a true correct and complete copy of any written notice received by the Supplier of non-compliance with applicable laws including, but not limited to, the Act with respect to the supply of Electric Generation Supply Services, and true and accurate transcripts of any oral notice of non-compliance with applicable laws, issued or given by any Government Agency; and (2) immediate written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such non-compliance, or of any legal proceeding alleging such non-compliance. In the event that the Supplier fails at any time to comply with Applicable Laws, then the Supplier shall remedy such failure at its cost and expense, and the Supplier shall bear all loss and expenses of the Municipality (to the extent reasonably verified and documented) resulting therefrom, and pay any resulting damages, fines, assessments, levies, impositions, penalties or other charges resulting therefrom.

*3.03 Compliance with Operating Requirements Pursuant to N.J.A.C. 14:4-6.10*

- A. The Supplier shall assist the Municipality and its Energy Agents in connection with dissemination of all information to potential Participants regarding the operation and bid price associated with the Program and to enroll any residential customer who does not opt-out of the Program, all in accordance with N.J.A.C. 14:4-6.6.

- B. The Supplier may reasonably request to utilize the Energy Agents' resources, equipment, systems or employees in connection with the Program with prior written notice to the Energy Agents which request may be approved or denied by the Energy Agents in its sole and absolute discretion.
- C. Upon written request, the Supplier shall provide certain communications to Participants in a language other than English.
- D. Supplier shall comply in all respects with its obligations under the BPU consumer protection rules in N.J.A.C. 14:4-7.
- E. It is the sole responsibility of the Supplier to schedule electricity generation supply delivery and transmission to meet the requirements of the Participants in accordance with the regulations and tariffs of the PJM and the LDC. This obligation of the Supplier may not be waived, curtailed or in any way diminished except by reason of Uncontrollable Circumstance (as hereinafter described) or due to a failure of the PJM or LDC that was beyond the control of Supplier.
- F. Supplier hereby assumes all risk and responsibility for all direct actual damages sustained by the Participants due to Suppliers inability to supply sufficient Electric Generation Supply Services to satisfy the full needs of the Participants as required pursuant to this Agreement (except as provided in in Subsection "E." above).
- G. Supplier shall be solely responsible for any penalties that may be imposed by an LDC as a result of over-delivery of electricity or under-delivery of electricity, or non-performance by the Supplier.

#### *3.04 Record Keeping Requirements*

The Supplier and the Municipality shall maintain timely, accurate and comprehensive records related to the Program. The Supplier and the Municipality shall provide such records to the other Party to include, among other things, the records of Participants and residential customers who are eligible to become Participants.

The Supplier shall also be required to collect, process, maintain, and provide any records, data, or paperwork that the Municipality deems necessary and permit the Municipality and/or Municipality's employees and professional advisors including, but not limited the Energy Agents, to review information related to Program enrollment and billing.

#### *3.05 Supplier Confidentiality*

Pursuant to N.J.A.C. 14:4-6.3(f), all parties including the Supplier and its subcontractors or other designees shall keep all Customer Information obtained as a result of its carrying out its obligations under this Agreement confidential and exempt from public disclosure as well as Open Public Records Act ("OPRA") requests, as required by the Applicable Laws request, unless otherwise required by court order, and to limit any use or dissemination of Customer Information to facilitate the Program. All such Customer Information shall be deemed confidential whether or not marked as such.

Further, pursuant to N.J.A.C. 48:3-85 - Consumer Protection Standards, the Supplier and its subcontractors or other designees agree to comply with the following:

N.J.S.A. 48:3-85 b. (1) Except as provided in paragraph (2) of this subsection , an electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell, or transfer individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage, and electric power payment history, to a third party without the consent of the customer.

(2) (a) An electric public utility or a gas public utility may disclose and provide, in an electronic format, which may include a CD rom, diskette, and other format as determined by the board, without the consent of a residential customer, a residential customer's name, rate class, and account number, to a government aggregator that is a municipality or a county, or to an energy agent acting as a consultant to a government aggregator that is a municipality or a county, if the customer information is to be used to establish a government energy aggregation program pursuant to sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94). The number of residential customers and their rate class, and the load profile of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant to this paragraph prior to the request by the government aggregator for bids pursuant to paragraph (1) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address, and account number of a residential customer and the name, address, and account number of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant to this paragraph upon the awarding of a contract to a licensed power supplier or licensed gas supplier pursuant to paragraph (2) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94). Any customer information disclosed pursuant to this paragraph shall not be considered a government record for the purposes of, and shall be exempt from the provisions of P.L.2001, c.404 (C.47:1A-5 et al.).

Supplier and its subcontractors or other designees hereby agree that they shall not release any information to any media outlets regarding its appointment as a Third-Party Supplier for the Program without prior consultation and written approval from the Municipality. Such requirement shall exist only in reference to the initial disclosure of Supplier appointment to the media outlets.

Pursuant to N.J.A.C. 14:4-6.10(a)14, Supplier and its subcontractors further agree that all customer information provided to the TPS for the government energy aggregation program shall be deemed confidential and shall not be used or disseminated by the TPS for any purpose other than the facilitation of the government energy aggregation program.

## **SECTION IV - OTHER OBLIGATIONS OF THE SUPPLIER**

### **4.01 Participant Bills**

A. Supplier shall not issue separate bills for its services in accordance with the Program. Participant billing shall be performed by the LDC utilizing a utility consolidated billing format. The Supplier shall provide to the LDC all of the information required pursuant to the LDC's tariffs and any additional information required by the Act for inclusion in the LDC's consolidated bills including, but not limited to, the following:

1. For all customers the unit price for each kWh; and
2. Any other information the BPU requires by order.

B. The Supplier shall provide budget billing to residential participants in the Program, and Supplier agrees that rather than invoicing and collecting monthly charges from a customer equal to monthly metered usage multiplied by the contract price, the supplier will invoice and collect an equal amount each month. For customers who are on the LDC's budget billing or equal payment plan, Supplier shall provide the LDC with the initial budget plan amount for the LDC to bill. The Supplier will maintain the budget balance for the customer and true it up as of the end of the contract term to ensure that the customer pays for actual electric generation service provided by the supplier. Additionally, the Supplier shall allow for customers to elect the budget billing option at any time and under the same terms and conditions available through the current LDC.

Supplier shall, from time to time review each customer's budget billing account and adjust the budgeted amount so the customer will not have a large reconciliation balance at the end of the term. In addition, in keeping with N.J.A.C. 14:4-6.10(a)14., Supplier shall true-up all accounts subject to budget billing at least every 12-month period during the term of the government energy aggregation program. Further, at end of the term, the customer shall be provided a final billing which provides a detail of the actual usage versus the budgeted amount. This detail shall be provided either before or not later than the time the charges appear on the LDC's bill. The billing detail shall either be included with the LDC bill or separately mailed to the customer at the Suppliers expense.

- C. In the event that the LDC rejects a Residential Account from utility consolidated billing for failure to timely pay any bills assessed, in accordance with the LDC's tariffs, Supplier may cease to provide Electric Generation Service to such Residential Account.
- D. Supplier will adjust Participant's accounts following confirmation of the actual volumes delivered and will adjust the Participant's account for amounts resulting from any discrepancy or adjustment to, or recalculation of, taxes. No retroactive adjustments will be made beyond a period of twelve (12) months from the date of a billing discrepancy; provided however, that as long as notice of any discrepancy is given by either party to the other party during such twelve (12) month period, the parties

acknowledge that the actual resolution of such discrepancy and the determination of any amounts owed may occur after the end of such twelve (12) month period.

#### *4.02 Representations by the Supplier*

The Supplier hereby represents to the Municipality as follows:

- A. The Supplier is TBD, a duly formed Corp Type, and validly existing and in good standing in the jurisdiction of its organization and is duly qualified to transact business in each and every jurisdiction where such qualification is required to enable the Supplier to perform its obligations under the terms of this Agreement. The Supplier is fully licensed by the BPU in accordance with the Act (License #XXX-XXXX).
- B. No act of bankruptcy has been commenced by or against the Supplier.
- C. The execution of this Agreement, and the performance of all obligations under this Agreement have been authorized by all required actions of the Supplier, all as required by the organizational documents and Applicable Laws that regulate the conduct of the Supplier's affairs.
- D. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any of the organizational documents of the Supplier or any agreement, indenture, mortgage, contract, instrument to which the Supplier is a party or by which the Supplier is bound.
- E. This Agreement, as of the date the document is signed by both parties, constitutes the valid, legally binding obligation of the Supplier, enforceable against the Supplier in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.
- F. The Supplier is not currently in breach of or in default under permits or any other Applicable Laws that would materially adversely affect the Supplier's ability to perform hereunder.
- G. There is no action, suit or proceeding, at law or in equity, before or by any court or similar Government Agency pending or, to the best knowledge of the Supplier, threatened in writing against the Supplier wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Supplier of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Supplier in connection with the transactions contemplated hereby.
- H. The Supplier acknowledges that it must utilize the current Electronic Data Interchange ("EDI") protocols to flag the customers that it enrolls as part of this Program as GEA customers.

The representations and warranties set forth in this Section 4.02 shall survive the early termination or expiration of this Agreement.

*4.03 Supplier's Obligation to Assist the Municipality with Preparation and Delivery of Notices to Participants and Collection of Participant Responses*

Supplier shall assist the Municipality and its Energy Agents with the preparation of a written notice to all residential electric customers within the jurisdiction of the Municipality (except residential customers already being served by a third party electricity supplier) informing them of the details of the Program and their ability to opt-out of the Program, in accordance with N.J.A.C. 14:4-6.6(r). Further, pursuant to N.J.A.C. 14:4-6.6(r)9, Supplier shall also prepare and include with Opt-Out Notice a one-page GEA Program Summary that reflects the specifics of the GEA Program in the standardized format that is posted on the Board's website (<http://www.nj.gov/bpu>), in English and Spanish and/or other language(s) requested by the Aggregator. The Supplier shall include language in its TPS contract summary that Supplier will comply with all Applicable Laws as defined in this Agreement. A Supplier's Terms and Conditions shall be provided to residents upon their request and shall be available electronically via website. Suppliers' Terms and Conditions shall reflect only the Terms and Conditions related to this Government Energy Aggregation Agreement.

The written notice will provide processes for residents wishing to opt-out of the GEA program. At a minimum, processes shall include a return mailer – either a tear-off form and return postage paid envelope or separate postage paid postcard – that residents can complete and mail back to the Supplier or Energy Agents. A bar code shall be utilized and imbedded with customer account number and placed on the return mailer. Supplier will also provide a toll-free telephone number dedicated to GEA programs that residents wishing to opt-out of the program can call. The Energy Agents will also provide their telephone number(s) for residents to call should they have questions about the program or wish to opt-out or opt-in to the program. The Energy Agents will provide residents access to a web portal where they can opt-in and opt-out of the program during the contract period; the portal immediately notifies both the Energy Agents and the Supplier via email of the opt-out or opt-in request.

Mailings must comply with all other terms and conditions as set forth in the RFP under “SCOPE, General Overview, Project Implementation”.

Supplier shall prepare and maintain a list of all residential customers within the geographic boundaries of the Municipality who elect to opt-out of the Program, along with a list of residential customers who would like to be excluded from future government energy aggregation programs. Such opt-out lists shall be provided to the Municipality, in Microsoft Excel format, upon request and at a minimum upon the Contract Termination Date.

Supplier, with the assistance of the Municipality and the Energy Agents, shall obtain from the LDC(s) a list of all residential customers within the geographic boundaries of the Municipality who are eligible to participate in the Program and are not currently served by a third party supplier of electricity, which list shall be provided to the Municipality and/or Energy Agents upon request. Further, in order to capture any new eligible residential customers within the geographic boundaries of the Municipality who are not already enrolled in the Program or under contract with

a Third-Party Supplier, such list shall be updated during the Program term by the LDC upon request of the Supplier, Aggregator, or Energy Agents.

Supplier shall assist the Municipality in enrolling residential customers that wish to opt-in to the program: (a) that move into the geographic boundaries of the Municipality after commencement of the Program; and/or (b) were not originally eligible for the Program because of an existing contract with alternative Third-Party Suppliers but have since ended such contract.

Upon the Contract Termination Date, Supplier will provide the Municipality with a Microsoft Excel file of current Program Participants and their respective Customer Information. In addition, Supplier and/or Energy Agents shall provide the Municipality with a Microsoft Excel file of residents who, during the term of the contract, expressed their desire to permanently opt-out of any government energy aggregation programs offered by the Municipality.

#### *4.04 Supplier's Obligation to Provide Indemnity*

Supplier agrees to protect, indemnify, defend and hold harmless the Municipality and its officials, employees, and agents (each an "Indemnified Party") from and against all liabilities, penalties, fines, forfeitures, damages, claims, demands, causes of action, judgments, costs, expenses, suits, and attorney's fees, and will defend the aforesaid in any suit, appeal or other proceeding, including those for personal injury to, or death of, any person, or loss or damage to property, contamination of or adverse effect on the environment, or any violation or alleged violation of Applicable Laws arising out of Supplier's (its employees, Subcontractors, agents or others acting on behalf of Supplier) wrongful acts or omissions in the performance of this Agreement; provided, however, that such indemnification shall not apply to the extent of any damages, liabilities or expenses resulting from or arising out of the gross negligence or willful misconduct of the Indemnified Party. Furthermore, Supplier agrees to indemnify the Municipality and the participants for any penalties assessed by the LDC due to Suppliers over-supply or under-supply of electricity.

The provisions of this Section 4.04 shall survive termination of this Agreement for a period of two (2) years.

#### *4.05 Emergency Contact Information*

Supplier shall provide a customer service representative via a toll-free telephone number to assist the Participants in the event of any issues related to its supply of Electric Generation Services. In the event of any such issues, Participants should contact:

##### Emergency Notifications

Supplier Toll Free Telephone Number: (XXX) XXX-XXXX

LDC Emergency Telephone Number: (800) 662-3115

BPU Division of Consumer Relations Telephone Number: (609) 777-3300

#### *4.06 Reporting Requirements*

##### **A. Municipality Requests for Information**

The Supplier, at its sole cost and expense, upon the reasonable written request of the Municipality shall use its best efforts to supply all non-confidential information available to it regarding the Program and its operation as it relates to this Agreement, which information shall include but not be limited to lists of residential customers who are residing in the geographic boundaries of the Municipality who are not currently being supplied Electric Generation Supply Services from a Third-Party Supplier.

#### B. Notice of Adverse Events

The Supplier shall provide the Municipality with a copy of the following materials within ten (10) business days after the Supplier receives verbal or written notice of the listed adverse event:

- 1) Any notice of violation issued by any Government Agency responsible for regulation of Electric Generation Supply Services which indicates that the Program is not in compliance with Applicable Laws.
- 2) Any notice of the denial, modification, revocation, suspension, cancellation, or non-renewal of any required license required for the performance of Electric Generation Services under this Agreement including, but not limited to licensure by the BPU.

Upon receipt of any such notice, the Supplier shall also provide certification to the Municipality attesting that, to the best of Supplier's knowledge, there are no circumstances that will materially impair the Supplier's ability to perform its obligations under the terms of this Agreement during the remainder of the Contract Term as a result of such notice of violation.

### ***SECTION V - PAYMENT OBLIGATIONS***

#### *5.01 Payment Obligation*

##### A. Payments to Supplier

The Contract Price charge by the Supplier for Electric Generation Supply Service to Residential Account that have not opted-out that have affirmatively opted-in to the Program as of the Contract Commencement Date shall be Contract Price as proposed by Supplier pursuant to the online energy auction dated DATE, and thereafter accepted and approved by the Municipality on DATE by official government action.

Any changes to such Contract Price, as described above, permitted pursuant to this Agreement and/or the Act or any Applicable Laws during the Contract Term may only be made final and effective upon affirmative authorization of the Municipality, unless such change is required by operation of law, pursuant to N.J.A.C. 14:4-7.6(l).

The Supplier hereby assumes all risk associated with the non-payment of all charges to the Program Participants, except, and to the extent that such charges are to the Municipality itself.

#### B. Payments to Energy Agent

As full payment for all services provided by the Energy Agents solely with regard to the establishment of an online auction for the selection of a third-party energy supplier, the Supplier shall pay to the Energy Agents in accordance with the terms in the agreement between Supplier and the Energy Agents.

The Municipality has retained Commercial Utility Consultants, Inc. ("CUC") and its subcontractor Concord Energy Services ("CES") to assist in procuring Electricity Supply Service for the Program Participants. The Supplier must enter into a separate agreement with CUC and CES, unless a broker agreement already exists between the Supplier and Energy Agents, whereby the Supplier will pay CUC and CES a fee of **\$0.0015**/kWh of electricity usage by the Program Participants during the term of the agreement. Payments will be made on a monthly basis to Energy Agents from Supplier, automatically, once supplier calculates aggregated usage from Program Participants. All Bid Prices must be inclusive of the Energy Agent Fees payable to CUC and CES.

The Supplier shall also reimburse Energy Agents a one-time fee of \$2.00 per eligible BGS-RSCP residential service (RS) account as identified by the LDC, for costs associated with the outreach program such as town hall meetings, advertising, and handout materials needed in order to educate Program Participants. This fee shall be paid sixty (60) days after the enrollment of eligible BGS-RSCP residential service (RS) accounts with the Supplier.

#### C. Reimbursements to Municipality

Pursuant to N.J.A.C 14:4-6.8(d), Administrative Fees for the Municipality to be reimbursed for out-of-pocket costs actually incurred, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the Municipality. The fees may be for attorney review, outreach costs including, but not limited to, printing of and postage for materials specific to the energy aggregation program. The Municipality may NOT allocate employee costs to the program or require Supplier to pay costs associated with these employees such as salaries, benefits, etc.; this is not permitted. The administrative fees, not to exceed \$2,000.00, shall be reimbursed within thirty (30) days after actual invoices and/or vouchers are provided to Supplier for reimbursement.

## ***SECTION VI - OTHER OBLIGATIONS OF THE MUNICIPALITY***

### ***6.01 Compliance with Applicable Laws***

- A. The Municipality shall perform all of its obligations under this Agreement in conformance with Applicable Laws including, but not limited to, the Act and in the event that the Municipality becomes a member of a larger energy aggregation program, it shall comply with the notice requirements in the rules of the Department of Community Affairs governing local public and public school cooperative purchasing, at N.J.A.C. 5:34-7.18 and 7.19.
- B. In furtherance of the Program, the Municipality, or the Energy Agents shall:
1. Provide written notice to all affected LDCs of the identity of the Supplier, in accordance with N.J.A.C. 14:4-6.6(o).
  2. Provide the Supplier with the name, address and account number of each residential customer in the jurisdiction of the Municipality who are eligible to become Participants.
  3. With the assistance of the Supplier, provide written notice to all residential customers within the jurisdiction of the Municipality (except those residential customers that already obtain Electric Generation Service from a Third-Party Supplier) regarding the details of the Program in accordance with N.J.A.C. 14:4-6.6(r);
  4. Provide a toll-free telephone number and letter to Municipality residents stating a contact name and email address that residential customers may use to opt-out or opt-in to the Program, as applicable; and
  5. Maintain a list of residential customers who, in addition to opting-out of the Program, contact the Municipality, the Energy Agents or the Supplier and formally oppose the Program and provide such residential customers the option of not being notified in future distributions of opt-out notices.

### ***6.02 Municipality Confidentiality***

Pursuant to N.J.A.C. 14:4-6.3(f), the Municipality shall keep all Customer Information and confidential information provided by Supplier obtained as a result of its carrying out its obligations under this Agreement confidential and exempt from public disclosure, as well as Open Public Records Act ("OPRA") requests as required by the Applicable Laws, unless otherwise required by court order and to limit any use or dissemination of Customer Information to facilitate the Program. All such Customer information shall be deemed confidential whether or not marked as such.

### ***6.03 Representations of the Municipality***

The Municipality hereby represents to the Supplier as follows:

- A. The Municipality is a body public and corporate and a public instrumentality of the State of New Jersey, duly organized and validly existing under the Constitution and laws of the State of New Jersey, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- B. The execution of this Agreement, and the performance of all obligations under this Agreement have been authorized by all required actions of the Municipality, all as required by the organizational documents and Applicable Laws that regulate the conduct of the Municipality's affairs.
- C. The execution of this Agreement and the performance by the Municipality of all obligations set forth herein do not conflict with and do not constitute a breach of or an event of default under any of the organizational documents of the Municipality or any agreement, indenture, mortgage, contract, instrument to which the Municipality is a party or by which the Municipality is bound.
- D. As of the Contract Commencement Date, this Agreement constitutes the legal, valid and binding obligation of the Municipality, enforceable against the Municipality in accordance with its terms, except to the extent that enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles affecting creditors' rights generally and except to the extent that enforceability may be limited by considerations of public policy.
- E. Other than any litigation heretofore mentioned in this Agreement, there is no action, suit or proceeding, at law or in equity, before or by any court or similar Government Agency pending against the Municipality wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Municipality of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Municipality in connection with the transactions contemplated hereby.

The representations and warranties set forth in this Section 6.02 shall survive the early termination or expiration of this Agreement.

## ***SECTION VII – DEFAULT, TERMINATION AND REMEDIES***

### ***7.01 Events of Default***

The occurrence of one or more of the following events shall constitute an "Event of Default":

- A. Either Party fails to make any payment required by the terms hereof when the same shall become due and payable, and such failure continues for at least thirty (30) days after written notice thereof.

- B. Any representation or warranty of either Party in this Agreement proves to be materially false or misleading at the time made.
- C. Either Party is adjudicated bankrupt or declared insolvent by the decree of a court of competent jurisdiction, or makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally when or as they become due, or a trustee, custodian, receiver, or liquidator is appointed for all or any material part of the such Party's facilities or either Party files or has filed against it a petition to be adjudicated a bankrupt or insolvent or seeking reorganization, arrangement, adjustment, or composition of or in respect of such Party under the Bankruptcy Code, or other similar laws, Federal or State, and if such petition is filed by a person other than such Party, and such petition is not vacated, dismissed or stayed on appeal within sixty (60) days.
- D. Either Party fails to perform any of its covenants, agreements or obligations hereunder in any material respect.

#### *7.02 Notice Upon an Event of Default; Cure Period*

If an Event of Default, as defined in Section 7.01 hereof, shall occur, the non-defaulting Party shall provide written notice of such same to the defaulting Party as soon as practicable upon becoming aware of such occurrence. Upon receipt of such written notice, the alleged defaulting Party shall have fifteen (15) days to upon which to cure such alleged Event of Default; provided, however, that if such performance requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such fifteen (15) day period, no Event of Default shall be deemed to have occurred or to exist if such non-performing Party shall commence performance to cure the alleged Event of Default within such fifteen (15) day period and shall diligently and continuously pursue the same to completion.

Notwithstanding the foregoing, any Uncontrollable Circumstance (as hereinafter defined) shall not be deemed or construed as an Event of Default under this Agreement.

#### *7.03 Remedies Upon Default*

If an Event of Default occurs as set forth in Section 7.01 and is not cured as set forth in Section 7.02, the Party who has not committed the default may pursue, at its option, any or all of the following remedies as permitted by Applicable Laws: (i) an action for direct actual damages; (ii) an action for specific performance along with all other applicable equitable remedies; (iii) termination of this Agreement pursuant to Section 7.04 below; (iv) enforcement of any applicable performance bond; and (v) any other remedies as permitted under Applicable Laws or equity.

#### *7.04 Right to Terminate this Agreement*

Either Party shall have the right to terminate this Agreement as a result of an uncured Event of Default pursuant to Section 7.01 herein. A Party may exercise the right of termination provided in this Section 7.04 at any time by giving the non-terminating Party written notice of its election to terminate this Agreement. The notice of termination shall specify a termination date which must be not less than thirty (30) days after delivery to the other Party of the notice of termination.

*7.05 Termination of Agreement for Failure to Supply Sufficient Electric Generation Supply Services*

If Supplier is unable to provide a sufficient quantity of uninterrupted Electric Generation Supply Services to satisfy the full requirements of the Participants as described in Section 3.01 above, Supplier shall return the Participants to LDC BGS as soon as practicable.

*7.06 Right to Amend Contract Terms Pursuant Material Change in Program Requirements; Additional Rights to Terminate*

Notwithstanding anything in this Agreement to the contrary, either Party to this Agreement has the right to terminate this Agreement in the event that, subsequent to the Contract Commencement Date, any federal, state or local statute, regulation, executive order, directive or similar mandate is adopted, or any federal or state judicial decision is issued which materially and adversely changes any of the following:

- A. The legislative and/or regulatory rules or provisions that control Governmental Energy Aggregation Programs or retail choice consumer protection laws.
- B. The validity, illegality and/or enforceability of all of the within Agreement.
- C. The ability of the Supplier to provide sufficient Electric Generation Services for the Participants as more fully described in Section 2.01 herein.
- D. Any additional tariffs, rates, riders, fees, or customer load profile(s), or any changes to existing tariffs, rates, riders, fees, or customer load profile(s), charged or authorized by the LDC, PJM, BPU, FERC or other regulatory party relating to the acquisition, sale, delivery, and purchase of electricity that results in an increase or decrease in the cost for performance of this Agreement that is not known or anticipated as of the contract date, whereas such increase or decrease alters the LDC BGS-RSCP rate.
- E. There shall be any discontinuance in the BPU approved utility consolidated billing/purchase of receivables program.
- F. An adjustment to Contract Price shall be permitted under the following circumstances, but shall not include any profit, markup or service fee as permissible by New Jersey Law.
  - 1) A legislated change in the current 6.625% State Sales and Use Tax ("SUT"), in which case the price adjustment shall reflect the difference between newly-enacted SUT rate and the 6.625% SUT rate in effect at the time Supplier submitted its Bid.
  - 2) A change in FERC-approved transmission NITS Charges implemented after the Effective Date of this Contract. In such instance either party may request for adjustment of the contract price by a percentage amount up to the percentage change in the Supplier's net direct total cost to provide Electric Generation Service to the Participant directly caused by the change in FERC-approved transmission

NITS Charges, net of applicable offsetting credits received by the Supplier from PJM; or

- 3) Change in Law. A change in law, regulation or tariff implemented after the date hereof that has a material impact on the cost to Electric Power Suppliers and Basic Generation Service suppliers for providing Electric Generation Service to residential customers, including to the Participant, in the applicable LDC transmission zone(s) in which Participant's Accounts are located. For this purpose, a material impact shall be an increase in cost of no less than \$0.0001/kWh. In such instance the Supplier may request adjustment of the contract price by a percentage amount up to the percentage change in the Supplier's direct total cost to provide Electric Generation Service to the Participant directly caused by the change in law. A change in law, regulation or tariff known to the Supplier at the time of the proposal submission date is not eligible for such adjustment.

Upon the occurrence of an event as described in Section 7.06F, the Supplier must provide thirty (30) days' notice of said increase or decrease to the Municipality and Energy Agents. Supplier must also provide notice to any affected Participant(s) on behalf of the participating municipality per N.J.A.C. 14:4-6.11 in writing of such change at least thirty (30) days prior to the effective date of the Contract Price increase to allow such Participant(s) sufficient time to Opt-Out of the program. Notice shall be sent by the supplier and provide postcard or a tear off portion to return along with pre-paid postage envelope. Any such increase would be limited such that it may not exceed the LDC BGS-RSCP price during the entire term of the Agreement. Supplier shall provide notice of any increase and upon request of the Municipality or its designated agent, provide reasonable documentation to support adjustments to the Contract Price implemented pursuant to this Section 7.06F of the Agreement.

Furthermore, upon the occurrence of any event listed in this Section 7.06, either Party may notify the other Party of such occurrence. Thereafter the Parties shall work in good faith for a period of 30 calendar days (excluding federal holidays) to amend the terms of the Agreement to resolve the impact of such occurrence, to the extent possible, provided, however, such change shall not affect the contract price except as specifically discussed in Section 7.06. In the event the Parties are unable to resolve any disputes pursuant this Section 7.06 in connection with the appropriate amendment to the terms of the Agreement, either Party shall have the option to terminate this Agreement by giving the non-terminating Party written notice of its election to terminate the Agreement. The notice of termination shall specify a termination date which must be not less than thirty (30) days after delivery to the other Party of the notice of termination.

#### *7.07 Effect of Termination*

In the event this Agreement is terminated for any reason pursuant to Section 7.06, upon the effective date of termination, neither Party shall have any further obligation to the other under this Agreement except that the provisions of this Agreement that expressly survives such termination shall continue to apply and the rights of either Party with respect to any Event of Default by the other Party that occurred prior to the effective date of termination shall survive, and the Parties

shall have the right to receive payment for services performed hereunder prior to the effective date of such termination.

#### *7.08 Remedies are Cumulative*

The rights and remedies granted to the non-defaulting Party shall be cumulative and the exercise of any right shall not prejudice the enforcement of any other right or remedy authorized by this Agreement or under Applicable Laws.

#### *7.09 Nonwaiver*

No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the non-breaching Party in its sole discretion.

No waiver of the occurrence of any Event of Default hereunder, whether by the Supplier or the Municipality, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto. .

### ***SECTION VIII - MISCELLANEOUS CONTRACT PROVISIONS***

#### *8.01 Assignment*

No party shall assign this Agreement without a written instrument signed by the Municipality and the Supplier.

#### *8.02 Cooperation Between the Parties*

Each Party shall execute and deliver any instruments and perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each Party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other Party; provided however, that such, actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

#### *8.03 Relationship of the Parties*

Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations which are to be assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, joint venture participant, agent, employer or legal representative of any other Party or to create any fiduciary relationship between or among the Parties.

#### *8.04 Modification*

Modifications, waivers or amendments of this Agreement or the provisions hereof shall be effective only if set forth in a written instrument signed by the Municipality and the Supplier.

#### *8.05 Headings*

The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

#### *8.06 Notices*

Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if sent by facsimile to the number set forth below, delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

If to Municipality: City of Hoboken  
94 Washington Street  
Hoboken, NJ 07030

If to Supplier: **TBD**  
**Street Address**  
**City, NJ, ZIP**

If such notice is sent by facsimile transmission, the original executed copy of such notice shall be mailed or delivered as provided above.

If delivered personally, any notice will be deemed delivered and given on the date delivered if the day is a business day, or in the first business day following delivery if the date is not a business day. If sent by facsimile, any notice will be deemed delivered and given upon confirmation of receipt. If by certified or registered mail, any notice will be deemed delivered and given on the third business day after deposit thereof in a United States Post Office.

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

#### *8.07 Successors and Assigns*

This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto.

#### *8.08 Governing Law*

The obligations of the Municipality and the Supplier under the terms of this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey, without regard to New Jersey's conflict of law rules, precedent or policies. The Parties

hereto acknowledge and agree that the courts of the State of New Jersey shall be the exclusive venue and proper forum in which to adjudicate any case or controversy which remains unresolved pursuant to Section 8.14 herein below, arising either directly or indirectly from or in connection with this Agreement. The Parties further agree that, in the event of litigation arising out of or in connection with this Agreement in these courts, they will not contest or challenge the jurisdiction or venue of the courts, except to the extent jurisdiction properly lies with a State Administrative Agency or regulatory body.

#### *8.09 Merger Clause*

This Agreement (including any exhibits and/or addendums hereto) constitutes the entire agreement and understanding of the Parties with respect to the matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

#### *8.10 Subcontractors*

Any subcontractor utilized by the Supplier shall obtain, prior to commencing the provision of services, and maintain throughout the term of the subcontract, all necessary federal, state, and local registrations, licenses and permits necessary to perform such services. Any and all such subcontractors who perform any of the duties of the Supplier under this Agreement shall perform the work in full compliance with all of the terms and conditions of this Agreement. The Supplier shall be fully responsible to the Municipality for all acts and omissions of its subcontractors, agents or persons or organizations engaged by the Supplier to furnish any services under a direct or indirect contract with the Supplier to the same extent that the Supplier is responsible for its own acts and omissions. Nothing in this Agreement shall create, or be construed to create, any contractual relationship between the Municipality and any such subcontractor, agent or person or organization.

#### *8.11 Uncontrollable Circumstance*

If the Municipality or Supplier are unable to perform any of its obligations under this Agreement as a result of acts of God, catastrophes, strikes or other disasters and failures of the electric transmission grid or LDC distribution system ("Uncontrollable Circumstance") beyond the control of the Municipality or Supplier, as the case may be, then, in that event, the provisions of this Agreement otherwise applicable to such non-performance shall become invalid. If an Uncontrollable Circumstance results in the delay of performance by any of the parties, then the time periods during which such performance is to be completed shall be extended to reflect such delays.

During an occurrence of any such Uncontrollable Circumstance, Supplier shall not be required to guarantee the uninterruptible supply of energy to Participants. Each Party hereto shall be excused for its failure to perform in accordance with this Agreement any obligation required to be performed by it hereunder, to the extent that such failure results from an Uncontrollable Circumstance, provided, that, in no event shall any Uncontrollable Circumstance excuse either Party from making any payment due hereunder in accordance with the terms hereof. Each Party shall seek diligently and in good faith to overcome or remove such Uncontrollable Circumstance, provided, however, that the settlement of any legal actions or administrative proceedings shall be

entirely in the discretion of the Party suffering the same, and it shall not be required to make settlement of legal actions or administrative proceedings when such settlement would be unfavorable, in the judgment of the Party suffering the legal action or administrative proceedings. A Party claiming the benefit of this Section 8.11 shall give prompt written notice thereof to the other Party.

#### *8.12 Waiver of Consequential Damages*

Except as otherwise provided herein, in no event, whether based upon contract, tort, warranty or otherwise, shall either Party be liable to each other, or to any third party, for or obligated in any manner to pay incidental, special, consequential, punitive or indirect damages of any nature whether foreseeable or not, arising out of, or in connection with, this Agreement or in tort.

#### *8.13 Disclaimer of Warranties*

This Agreement shall not be subject to implied warranties of any type including Fitness for a Particular Purpose or Implied Warranties of Merchantability. Any waivers provided in this Section shall not be applicable to the Supplier's obligation to provide a sufficient level of Electric Generation Services to meet the full demands of the Participants as described in Section III herein.

In the event that Supplier is unable to supply the required Electric Generation Services, it shall be subject to damages equal to the difference between the price of Electric Generation Service provided by Supplier as calculated in Section 5.01(A) and the price paid by the each Participant for Electric Generation Services from an alternative source, not to be limited to but also include the currently applicable LDC BGS tariff price and damages for associated costs, if any, incurred by each customer in having to switch to an alternative source. Such difference shall be multiplied by the energy usage of the Participants measured in kWh for the remainder of the Contract Term.

#### *8.14 Dispute Resolution*

Subject to Applicable Laws, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, which the Parties are unable to resolve through negotiation or non-binding mediation themselves shall be finally settled by arbitration in accordance with this Section 8.14 and (except to the extent inconsistent with the express provisions of this Section), the Arbitration Rules of the American Arbitration Association. Upon a written demand for arbitration, each Party will select an impartial arbitrator within thirty (30) days after such demand, and the two arbitrators will select a third impartial arbitrator. If a Party fails to select an arbitrator within such thirty (30) day period, then the other Party may select an impartial arbitrator on its behalf. If the two arbitrators cannot agree on the selection of a third arbitrator within sixty (60) days after their appointment, either Party may request the selection of the third arbitrator by a judge of the Superior Court of New Jersey. The agreement to arbitrate disputes as provided in this Agreement shall be specifically enforceable in any court having jurisdiction. The Parties agree to make a good faith effort to cause the arbitration award to be made within one hundred and twenty (120) days of the naming of the third arbitrator. The award shall be in writing and shall include written findings of fact and conclusions of law.

#### *8.15 Severability*

In the event that any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof unless a court of competent jurisdiction so holds.

#### *8.16 Counterparts*

This Agreement may be simultaneously executed in several electronic, facsimile, or PDF counterparts, each of which shall constitute an original document and all of which shall constitute but one and the same instrument.

#### *8.17 Exculpation*

It is expressly understood and agreed that nothing in this Agreement shall be construed to create any personal liability on the part of officers, officials, employees, agents or representatives of any Party. Such exculpation of personal liability shall be absolute and without any exception whatsoever.

#### *8.18 Counting of Days*

In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

IN WITNESS WHEREOF, the Municipality and Supplier have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

***THE CITY OF HOBOKEN,  
COUNTY OF HUDSON, NEW JERSEY***

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

[SEAL]

***SUPPLIER (TBD)***

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_