

RESOLUTION NO. 2017 – 60

**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL OF THE
BOROUGH OF MOUNT ARLINGTON, COUNTY OF MORRIS, STATE OF NEW
JERSEY, AUTHORIZING THE SIGNING OF GOVERNMENT ENERGY
AGGREGATION PROGRAM AGREEMENTS**

WHEREAS, the State of New Jersey has been engaged in a process to establish a competitive market place through deregulation and restructuring the electric and natural gas utility markets; and

WHEREAS, the establishment of a governmental energy aggregation program ("GEA Program") to purchase electric generation service and natural gas pursuant to the Government Energy Act of 2003, *N.J.S.A. 48:3-93.1 et seq.* ("Act") and the New Jersey Board of Public Utilities' implementing rules at *N.J.A.C. 14:4-6.1 et seq.* ("Rules") will increase competition for the provision of electric power and natural gas to residential and non-residential electricity and gas ratepayers, thereby increasing the likelihood of lower electric rates and natural gas rates for these users without causing an interruption in service; and

WHEREAS, under a GEA Program the residential ratepayers may have the opportunity to receive a direct reduction in their electric bills through the bulk purchase of energy from a third-party energy supplier; and

WHEREAS, pursuant to Ordinance #03-17 adopted by the Mount Arlington Borough Council on March 7, 2017, the Borough of Mount Arlington publicly declared its intent to commence a GEA Program by participating in the Morris Area Energy Cooperative (MAEC); and

WHEREAS, Wharton Borough is the Lead Agency for the MAEC program and shall accept or reject pricing on behalf of the Cooperative and its participant members; and

WHEREAS, the Borough of Mount Arlington, as a participating member of the MAEC program hereby agrees to proceed with the program, by signing the Supplier Agreement, should Wharton Borough accept pricing, which provides a savings on the supply portion of the electric bill for the residential energy aggregation program; and

WHEREAS, Wharton Borough appointed Concord Engineering dba Concord Energy Services (CES) and Commercial Utility Consultants, Inc. (CUC) for the MAEC to serve as the Energy Agencies to assist and administer the GEA program at no cost to Wharton Borough or MAEC or its participating members; and

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Mount Arlington, in the County of Morris, New Jersey, duly assembled in public session, as follows:

Pursuant to the provisions of N.J.S.A. 40A:11-11(5), the Mayor is hereby authorized to enter into a Cooperative Pricing Agreement with the Lead Agency.

1. The Lead Agency shall be responsible for complying with the provisions of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and all other provisions of the revised statutes of the State of New Jersey.
2. The Borough of Mount Arlington as a participating member of the MAEC program hereby agrees to proceed with the program, by signing the Supplier Agreement, should Wharton Borough accept pricing, which provides a reduction on the supply portion of the electric bill for the residential energy aggregation program;
3. The Mayor, Chief Financial Officer, Treasurer or other municipal officer is hereby authorized and directed to execute, on behalf of the Borough of Mount Arlington any documents necessary to carry out the purpose of this Resolution including the Supplier Services Agreement providing a reduction is achieved at the time of auction.

I HEREBY CERTIFY this to be a true and correct Resolution of the Borough Council of the Borough of Mount Arlington, adopted on April 4, 2017.

Approved:

BOROUGH OF MOUNT ARLINGTON

Michael Stanzilis, Mayor

Attest:



Linda DeSantis, RMC, Borough Clerk

**AGREEMENT BY AND BETWEEN
BOROUGH OF MOUNT ARLINGTON
AND
CONCORD ENERGY SERVICES**

THIS AGREEMENT made this _____ day of April, 2017 ("Effective Date"), which shall be the date on which the last authorized individual executes this Agreement) by and between the Borough of Mount Arlington, in the County of Morris, a body politic and corporate of the State of New Jersey, with principal offices located at 419 Howard Boulevard, Mount Arlington, NJ 07856 and Concord Energy Services (CES) having its principal place of business at 520 South Burnt Mill Road, Voorhees, NJ 08043, hereby recites as follows:

WITNESSETH:

WHEREAS, The Borough of Wharton as lead agency for The Morris Area Energy Cooperative (MAEC) has designated Concord Energy Services as a provider of energy agent services to be utilized by Cooperative Members in connection with the development and administration of energy procurement processes for a Government Energy Aggregation (GEA) program to be conducted on an on-line basis pursuant to P.L. 2001, c. 30; N.J.S.A. 48:3-50-51; and 48:3-92 et. al.; and executed an agreement on July 7th, 2014 (Addendum A).

WHEREAS, CES is willing and able to provide the required services; now, therefore,

WHEREAS the Borough of Mount Arlington has passed an Ordinance to participate in the MAEC and the Borough of Mount Arlington and CES agree as follows:

1. **CONSULTING SERVICES**

The Consulting Services (also referred to as the "Services") are to be performed by Concord Energy Services and its subcontractor, Commercial Utility Consultant (CUC), ("Consultants") as outlined in Addendum A.

2. **INDEMNIFICATION**

Consultants shall defend, indemnify and hold harmless the Borough of Wharton, the Borough of Mount Arlington, its officers, agents and employees from and against any and all claims, suits, actions, damages or costs, of any nature whatsoever, including attorney's fees, whether for personal injury, property damage or other liability, arising out of or in any way connected with the Consultant's acts or omissions in connection with this Agreement.

Consultants are acting in a consulting capacity and any opinions, advice, forecasts, or analysis presented by Consultants are based on its professional judgment and do not constitute a guarantee. In no event shall damages to the Borough of Mount Arlington exceed the amount of fees paid to it arising out of the services or action(s) taken pursuant to this agreement.

IN WITNESS WHEREOF, the parties hereto have placed their signatures and appropriate seals on the day and year mentioned on the face page of this agreement.

ATTEST:

Borough of Mount Arlington

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

WITNESS:

**Concord Engineering Group, Inc.
dba Concord Energy Services**

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

SCHEDULE 1 - ENERGY MANAGEMENT SERVICES

Once the Borough of Wharton, Lead Agent, passes the Resolution, Concord Energy Services (CES) will complete the following steps in support of the GEA program. CES will also provide templates for all documents required for the program.

Residential Opt-Out Process (Option 2-A)

1. Obtain a copy of each participating municipality's ordinance to share with Local Distribution Company (LDC) as documentation for the GEA program.
2. Obtain a copy of each participating municipality's logo in high resolution in jpeg, tiff or png format. This is needed for advertising and the opt-out letter.
3. Develop an outreach and marketing plan with each participating municipality.
4. Provide a resolution which allows each participating municipality to appoint CES as the Energy Agent and sign any required documents to proceed with the program. Obtain a copy for records.
5. Provide a Government Aggregation Agreement (GAA) to be signed by the municipality and CES. This is CES's contract with each participating town that outlines CES's responsibilities to the town through this program. Three (3) original signed copies are required.
6. As Energy Agent, CES will reimburse the municipality any actual charges incurred by the municipality with respect to participation in the Program.
7. Provide Local Distribution Company (LDC) Agreements to be signed by each participating municipality. This is the agreement between utility company and the municipality. Three (3) original signed copies are required.
8. Send draft bid documents (Request for Proposal (RFP) and Supplier Services Agreement (SSA)) to the Board of Public Utilities (BPU) and Rate Counsel for 15-day review.
9. Send signed GAA and LDC agreements to the appropriate utility company for their execution and request usage data (including capacity and transmission).
10. Receive data from LDC and prepare for auction.
11. After comments from BPU and Rate Counsel send back comments, prepare final bid documents and send to suppliers. Allow two (2) weeks for review, Q & A, and submission for qualification documents.
12. Notify the Borough of Wharton and each participating municipality that the bid documents have been sent to all suppliers and the auction date has been set.
13. Conduct auction and supply savings estimate. Determine what pricing structure best suits the Cooperative in order to award the contract. Based on market conditions, additional auctions may be run.

14. Provide a Supplier Services Agreement (SSA) to be executed by each participating municipality and winning supplier. This has already been reviewed by BPU and Rate Counsel, therefore, nominal changes may be considered.
15. Provide all parties with executed copies of the SSA.
16. Notify LDC of winning supplier and obtain eligible customer account information.
17. CES shall keep all customer information confidential and exempt from public disclosure and to limit any use or dissemination of customer information to facilitation of the Program, noting that customer information is not subject to Open Public Records Act.
18. Review opt-out letter to each participating municipality and obtain signature.
19. Provide winning supplier with customer data (name, address and account #) to prepare for opt-out letter to be sent.
20. Facilitate 30-day opt-out period once opt-out letter is sent by supplier.
21. Manage all opt-out calls and customer inquiries through CES and/or supplier call center, opt-out letters, and www.njaggregation.us/MAEC website.
22. Assist with transferring residents to TPS service.
23. Continue to monitor and provide quarterly savings reports to council.
24. Start the reverse energy procurement process four (4) months prior to TPS contract end date.

Commercial Opt In Process (Option 2-A)

1. Obtain a copy of the ordinance to share with Local Distribution Company (LDC) as documentation for the GEA program.
2. Send draft bid documents (RFP & SSA) to BPU and Rate Counsel for 15-day review
3. Request from LDC all eligible customers for OPT IN options.
4. Provide a draft letter with OPT IN options for signature.
5. Facilitate mailing for OPT IN letter and provide support via 800 #, www.njaggregation.us, mailer as well as outreach meetings.
6. At expiration of OPT IN period CES will conduct an energy auction as per the E-procurement process (Local Unit Electronic Technology Pilot Program and Study (P.L. 2001, c.30).
7. Present executable event pricing to government agency and will help select the winning supplier and agreement that is most advantageous to execute. Based on market conditions, additional auctions may need to be ran at later dates.
8. Facilitate contract execution between both the government agency and the winning supplier in the aggregation program.
9. Inform the LDC of the winning supplier.
10. CES will collaborate with winning supplier to provide each eligible commercial customer a second letter. The letter will include information of winning supplier, along with the price and terms of the agreement.
11. CES will facilitate local LDC to send a third and final letter to property owners letting them know when the switch date will be.
12. Facilitate with winning supplier and LDC service to all customers will begin promptly at the next meter read date following the execution of all agreements.
13. CES will continue to monitor the deregulated energy marketplace and will start the reverse energy procurement process 4 months prior to TPS contract end date.

MORRIS AREA ENERGY COOPERATIVE

AGREEMENT FOR A COOPERATIVE PRICING SYSTEM

This Agreement made and entered into this ____ day of _____, 20____, by and between the BOROUGH OF WHARTON, with an address of 10 Roberts Street, Wharton, NJ 07885 and hereinafter referred to as "Lead Agency" and the following participants listed below, who desire to participate in the Morris Area Energy Cooperative (hereinafter referred to as "Cooperative Pricing System" or the "System").

PARTICIPANTS

- a) The Borough of Wharton with an address of 10 Robert Street, Wharton, NJ 07885 and hereinafter referred to as "Lead Agency"; and
- b) The Borough of Florham Park with an address of 111 Ridgedale Avenue, Florham Park, NJ 07932, and hereinafter referred to as "Florham Park"; and
- c) The Borough of Mendham, with an address of 2 West Main Street, Mendham, NJ 07945, and hereinafter referred to as "Mendham Borough"; and
- d) The Borough of Mount Arlington, with an address of 419 Howard Boulevard, Mount Arlington, NJ 07856, and hereinafter referred to as "Mount Arlington".

With all above municipalities being hereinafter referred to collectively as "Participants."

W I T N E S S E T H

WHEREAS, N.J.S.A. 40A:11-11(5), specifically authorizes two or more contracting units to establish a Cooperative Pricing System for the provision and performance of goods and services and enter into a Cooperative Pricing Agreement for its administration; and

WHEREAS, the Borough of Wharton, the Lead Agency, is conducting a voluntary Cooperative Pricing System with other Participants; and

WHEREAS, this Cooperative Pricing System is to effect substantial economies in the provision and performance of goods and services; and

WHEREAS, all Participants hereto have approved the within Agreement by Resolution in accordance with the aforesaid statute; and

WHEREAS, it is the desire of all Participants to enter into such Agreement for said purposes;

NOW, THEREFORE, IN CONSIDERATION OF the promises and of the covenants, terms and conditions hereinafter set forth, it is mutually agreed as follows:

1. The goods or services to be priced cooperatively shall include Electric Generation Service and Natural Gas Supply Service.
2. The items and classes of items which may be designated by the Participants hereto may be purchased cooperatively for the period commencing with the execution of this Agreement and continuing until terminated as hereinafter provided.
3. The Borough of Wharton, the Lead Agency, on behalf of all Participants, shall upon approval of the registration of the System and annually thereafter on the anniversary of the registration of the System, publish a legal ad in such format as required by N.J.A.C. 5:34-7.9(a) in its official newspaper normally used for such purposes by it to include such information as:
 - (A) The name of Lead Agency soliciting competitive bids or informal quotations.
 - (B) The address and telephone number of Lead Agency.
 - (C) The names of the Participant contracting units.
 - (D) The State Identification Code assigned to the Cooperative Pricing System.
 - (E) The expiration date of the Cooperative Pricing System.
4. Each of the Participant contracting units shall designate, in writing, to the Lead Agency, the items to be purchased and indicate therein the approximate quantities desired, the location for delivery and other requirements, to permit the preparation of specifications as provided by law.
5. The specifications shall be prepared and approved by the Lead Agency and no changes shall be made thereafter except as permitted by law. Nothing herein shall be deemed to prevent changes in specifications for subsequent purchases.
6. A single advertisement for bids or the solicitation of informal quotations for the goods or services to be purchased shall be prepared by the Lead Agency on behalf of all of the Participant contracting units desiring to purchase any item.
7. The Lead Agency when advertising for bids or soliciting informal quotations shall receive bids or quotations on behalf of all Participant contracting units. Following the receipt of bids, the Lead Agency shall review said bids and on behalf of all Participant contracting units, either reject all or certain of the bids or make one award to the lowest responsible bidder or bidders for each separate item. This award shall result in the Lead Agency entering into a Master Contract with the successful bidder(s) providing for two

categories of purchases:

(A) The quantities ordered for the Lead Agency's own needs, and

(B) The estimated aggregate quantities to be ordered by other Participant contracting units by separate contracts, subject to the specifications and prices set forth in the Lead Agency's Master Contract.

8. The Lead Agency shall enter into a formal written contract(s) directly with the successful bidder(s) only after it has certified the funds available for its own needs.

9. Each Participant contracting unit shall also certify the funds available only for its own needs ordered; enter into a formal written contract, when required by law, directly with the successful bidder(s); issue purchase orders in its own name directly to successful vendor(s) against said contract; accept its own deliveries; be invoiced by and receive statements from the successful vendor(s); make payment directly to the successful vendor(s) and be responsible for any tax liability.

10. No Participant contracting unit in the Cooperative Pricing System shall be responsible for payment for any items ordered or for performance generally, by any other Participant contracting unit. Each Participant contracting unit shall accordingly be liable only for its own performance and for items ordered and received by it and none assumes any additional responsibility or liability.

11. The provisions of Paragraphs 7, 8, 9, and 10 above shall be quoted or referred to and sufficiently described in all specifications so that each bidder shall be on notice as to the respective responsibilities and liabilities of the Participant contracting units.

12. No Participant contracting unit in the Cooperative Pricing System shall issue a purchase order or contract for a price which exceeds any other price available to it from any other such system in which it is authorized to participate or from bids or quotations which it has itself received.

13. The Lead Agency reserves the right to exclude from consideration any good or service if, in its opinion, the pooling of purchasing requirements or needs of the Participant contracting units is either not beneficial or not workable.

14. The Lead Agency shall appropriate sufficient funds to enable it to perform the administrative responsibilities assumed pursuant to this Agreement.

15. This Agreement shall become effective on _____ subject to the review and approval of the Director of the Division of Local Government Services and shall continue in effect for a period not to exceed five (5) years from said date unless any party to this Agreement shall give written notice of its intention to terminate its participation.

16. Additional local contracting units may from time to time, execute this Agreement by means of a Rider annexed hereto, which addition shall not invalidate this Agreement with respect to other signatories. The Lead Agency is authorized to execute the Rider on behalf of the members of the System.

17. All records and documents maintained or utilized pursuant to terms of this Agreement shall be identified by the System Identifier assigned by the Director, Division of Local Government Services, and such other numbers as are assigned by the Lead Agency for purposes of identifying each contract and item awarded.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their authorized corporate officers and their respective seals to be hereto affixed the day and year above written.

FOR THE LEAD AGENCY

The Borough of Wharton

BY:

(NAME AND TITLE))

FOR THE PARTICIPANT UNITS

The Borough of Florham Park

BY:

(NAME AND TITLE)

The Borough of Mendham

BY:

(NAME AND TITLE)

The Borough of Mount Arlington

BY:

(NAME AND TITLE)