

RESOLUTION NO. 45-2020

A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO AN AGREEMENT WITH FIRST ENERGY ADVISORS FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR ELECTRICITY AGGREGATION.

WHEREAS, the Council of the Village of Loudonville has determined that it is in the best interests of the Village to continue the Governmental Aggregation Program previously enacted in the Village; and

WHEREAS, the Council of the Village of Loudonville wishes to use the services of First Energy Advisors to assist with the aggregation program.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF LOUDONVILLE, STATE OF OHIO:

SECTION 1: That the Mayor and Fiscal Officer of the Village of Loudonville, Ohio are hereby authorized and directed to enter into an agreement with First Energy Advisors, pursuant to terms and conditions contained in the attached Exhibit "A" incorporated herein by reference.

SECTION 2: This Resolution shall take effect and be in force on the earliest date allowed by law.

Dated: _____

Stephen Stricklen, Mayor

Attest:

Elaine Van Horn, Fiscal Officer

Approved:

Thomas R. Gilman, Village Solicitor



AGREEMENT FOR ELECTRIC ENERGY CONSULTING SERVICES

This Agreement for Electric Energy Consulting Services ("Agreement") is made and entered into as of this _____ day of November 2020, ("Commencement Date"), by and between **Suvon, LLC d/b/a FirstEnergy Advisors**, an Ohio limited liability company, having its principal place of business at 76 South Main Street, Akron, OH 44308 ("FirstEnergy Advisors"), and the Village of Loudonville, an Ohio political subdivision located within Ashland and Holmes Counties ("Client").

WHEREAS, Client is interested in reducing the overall electric cost ("Energy") and managing electric cost risk for its residents and small businesses through a Governmental Aggregation Program; and

WHEREAS, FirstEnergy Advisors offers Energy Consulting, Brokerage and Aggregation services that identify electric cost savings, manage electric cost risk and may reduce the amount and/or cost per Energy unit consumed ("Services"); and

WHEREAS, Client agrees that FirstEnergy Advisors may engage Zentility, Inc. to assist FirstEnergy Advisors with providing Services to the Client hereunder; and

WHEREAS, FirstEnergy Advisors and Zentility, Inc. are each individually certified by the Public Utilities Commission of Ohio ("PUCO") as a Broker and Aggregator of Electricity; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 Particulars of Energy Consulting Services.

1.1 FirstEnergy Advisors shall either provide or be responsible for providing the following Services:

- 1.1.1 Obtain Client's historical Energy usage data;
- 1.1.2 Review Client's active Energy supply agreements;
- 1.1.3 Prepare account load profiles and analysis;
- 1.1.4 Develop Energy procurement strategies;
- 1.1.5 Draft customized Request for Proposals ("RFPs") to solicit Energy offers for residential and small commercial retail customers located within Client's jurisdiction;
- 1.1.6 Manage all contact with potential Energy suppliers including pre-qualification;
- 1.1.7 Prepare Energy cost estimates versus the alternative utility rate in effect at the time;
- 1.1.8 Contract negotiation and closing with selected Energy suppliers; and
- 1.1.9 Release all Client information needed to switch Energy suppliers.

1.1.10 If Client is retaining FirstEnergy Advisors to design, implement, and administer an Opt-Out Governmental Aggregation Program, the following additional Services apply:

- 1.1.10.1 Draft the necessary resolutions and/or ordinances;
- 1.1.10.2 Draft and maintain Client's Plan of Operation and Governance and PUCO Certification;
- 1.1.10.3 Draft Opt-Out Notices for the selected Energy supplier;
- 1.1.10.4 Assist the selected Energy supplier with scrubbing of eligible customer list; and
- 1.1.10.5 Provide ongoing maintenance during the term of this Agreement; including reporting to community officials and the PUCO, creating press releases, FAQs, website materials, monthly newsletters, etc.

1.2 FirstEnergy Advisors will provide these Services in the following area(s): Village of Loudonville, Ohio.

2.0 Compensation.

2.1 Electric Supply Consulting

2.1.1 The selected Energy suppliers are responsible for payment of FirstEnergy Advisors' administrative fee of **\$0.0005/kWh** for all electricity consumed by participants in Client's program. Client agrees that this fee shall be written in the RFPs for Energy supply service. Only Energy suppliers agreeing to FirstEnergy Advisors' administrative fee would be eligible to bid.

2.1.2 FirstEnergy Advisors may direct Zentility, Inc., a certified broker and aggregator of electricity, to send Client's RFP to additional Energy suppliers. If the selected Energy supplier is chosen as a result of such action, Client agrees that the administrative fee identified in Section 2.1.1 shall be written into the RFPs for Energy supply service with payment of the administrative fee directed to Zentility, Inc.

3.0 Independent Agent.

3.1 FirstEnergy Advisors shall, at all times, during the performance of the Services be an independent agent. The parties shall not have the authority to bind, represent or commit the other as a result of this Agreement.

3.2 Client shall retain all legal and equitable rights and remedies available to it against any Energy supplier.

3.3 Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, or employee-employer relationship between the parties for any purpose, and FirstEnergy Advisors agrees to indemnify and hold harmless Client from and against any and all liability, costs, damages, expenses, fees, fines or penalties in connection with FirstEnergy Advisors' employee, or FirstEnergy Advisors' contractor, or agent claims of benefits, withholding obligations, payroll taxes, workers' compensation and occupational illness.

4.0 Cooperation. Client acknowledges that clear lines of communication between FirstEnergy Advisors and Client are necessary to advance FirstEnergy Advisors' work on Client's behalf. For that reason, Client shall identify an employee who has the ultimate decision-making authority on behalf of Client. Whenever possible, Client shall assign a single point of contact for gathering and disseminating information to FirstEnergy Advisors and for making timely decisions within Client's organization.

5.0 Exclusive Agent. Client acknowledges that Energy suppliers will not respond with electric offers solicited by multiple agents, including the Client itself, for the same accounts. Until Client executes an Energy supply agreement with an Energy supplier to provide electricity, Client hereby agrees to utilize FirstEnergy Advisors as an exclusive agent and grants exclusive rights to perform such Services, as described in and subject to the terms and conditions of this Agreement. Any Energy suppliers contacting Client shall be referred to FirstEnergy Advisors for possible inclusion in a competitive bid process administered by FirstEnergy Advisors.

6.0 Term and Termination.

6.1 This Agreement shall be effective upon execution by both parties and shall remain in effect for the term of the specific Energy supply agreements entered into between Client and the selected Energy suppliers prior to the expiration or termination of this Agreement.

6.2 Unless either party has requested to terminate this Agreement, at least six (6) months prior to expiration, it shall renew for subsequent one-year terms and RFPs will be sent to potential Energy suppliers.

6.3 Client assumes all obligations to evaluate offers and arrange for its Energy service upon termination of this Agreement.

7.0 Severability. If any provision or portion of this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or enforceability shall not affect any other provision, and this Agreement shall be equitably construed as if it did not contain the invalid, illegal or unenforceable provision.

8.0 Limitation of Liability. Notwithstanding anything to the contrary, in any action arising out of this Agreement, the parties agree that none of the parties shall be liable for incidental, consequential, punitive, exemplary, special or indirect damages, lost profits, anticipated revenue or other business interruption damages, in tort, contract or otherwise.

9.0 Force Majeure. No party shall be liable for any delays or failures in performance due to circumstances beyond their respective controls.

10.0 Confidentiality. Except for matters of public record, information already within a party's possession prior to entering into this Agreement, and except to the extent required (through deposition, interrogatory, request for production, subpoena, civil investigative demand or similar process) by a court order, each party agrees to keep confidential all information, including pricing and any data collected hereunder, unless expressly agreed to in writing by Client and FirstEnergy Advisors. In the event that either party becomes required, in the manner specified above, to disclose any confidential information, the disclosing party shall provide prompt written notice to the other party so that the impacted party may timely seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the disclosing party agrees: (i) to furnish only that portion of the confidential information that is required to be furnished; and (ii) to exercise reasonable commercial efforts to obtain assurance that confidential information will be accorded such confidential treatment.

11.0 Compliance with Laws. FirstEnergy Advisors shall, at their sole cost and expense, comply with all federal, state, and local laws applicable to the Services under this Agreement.

12.0 Assignment. Client and FirstEnergy Advisors shall not assign or transfer, in whole or in part, this Agreement or any rights or obligations hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld. All of the covenants, conditions and obligations of this Agreement shall extend to and be binding upon the permitted heirs, personal representatives, successors and assigns, respectively, of the parties hereto.

13.0 Merger of Agreement. This Agreement is an integrated agreement and contains the entire agreement regarding matters herein between the parties. No representations, warranties or promises have been made or relied upon by any party hereto other than as set forth herein. This Agreement supersedes and controls any and all prior communications between the parties or their representatives relative to matters contained herein. Any changes, modifications, or additions to this Agreement shall be made by mutual consent in writing in the form of a supplemental Agreement signed by the parties and attached hereto.

14.0 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Delivery of a copy of this Agreement by facsimile transmission, by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall have the same effect as physical delivery of the paper document bearing the original signature.

15.0 Notices. All notices required hereunder shall be in writing and shall be delivered electronically via email, or personally, by certified mail, return receipt requested, or by overnight carrier to the following addresses:

As to FirstEnergy Advisors:
FirstEnergy Advisors
76 South Main Street A-GO-1
Akron, OH 44308
Attn: Lorraine Rader

As to the Client:
Village of Loudonville
156 N Water St.
Loudonville, Ohio 44842
Attn: _____

16.0 Governing Law. This Agreement shall be governed by, subject to the jurisdiction of and construed in accordance with, the laws and courts of the State of Ohio for both substantive and procedural matters.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and represent that the persons whose signatures appear below are duly authorized to execute the same.

Suvon, LLC d/b/a FirstEnergy Advisors

Village of Loudonville, Ohio

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____