

RESOLUTION 137-14

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE BOROUGH OF CLAYTON AND
JERSEY ENERGY GROUP LLC**

WHEREAS, the Borough of Clayton and Jersey Energy Group LLC have agreed to enter into an Agreement for development and administration of an energy procurement process for a GEA Program relating to the residential and commercial users within the Municipality; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement between the Jersey Energy Group, LLC and the Borough of Clayton.
2. That the Mayor be and is hereby authorized to execute said Agreement on behalf of the Borough of Clayton.

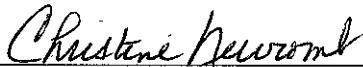
ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton held on July 10, 2014.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, July 10, 2014.


CHRISTINE NEWCOMB, Borough Clerk

**AGREEMENT BY AND BETWEEN THE ^{BOROUGH}TOWNSHIP OF Clayton
AND JERSEY ENERGY GROUP, LLC**

THIS AGREEMENT, made this 10th day of July, 2014 ("Effective Date") by and between the Township of Clayton (hereinafter "Municipality"), a municipal corporation of the State of New Jersey, and Jersey Energy Group, LLC (hereinafter "JEG" or "Consultant"), is as follows:

WITNESSETH:

WHEREAS, Municipality seeks to develop and implement a Government Energy Aggregation program ("GEA Program") under the New Jersey Government Energy Aggregation Act of 2003, N.J.S.A. § 48:3-92 et seq. and the regulations promulgated thereunder, N.J.A.C. § 14:4-6.1 et seq.;

WHEREAS, JEG is a licensed energy agent and energy consultant with the New Jersey Board of Public Utilities ("BPU");

WHEREAS, Municipality designated JEG as the provider of energy consulting services to be utilized by Municipality in connection with the development and administration of an energy procurement process for a GEA Program relating to the residential and commercial users within the Municipality; and

WHEREAS, JEG is willing and able to provide the required services;

WHEREAS, Municipality may also elect to include in the bids set forth herein the Municipality's own facilities and utility accounts.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Municipality and JEG agree as follows:

(1) TERM

The term of this Agreement shall be for the period commencing upon Effective Date of this Agreement and continuing until three years after the execution of any supply contract between the Municipality and a third-party supplier that was entered into pursuant to JEG's services under this Agreement, with the option to extend the Agreement thereafter for two year periods thereafter, as agreed upon by mutual agreement.

(2) CONSULTING SERVICES

The Consulting Services (also referred to as the "Services") to be performed by JEG that are the subject of this Agreement are as follows. At all times JEG shall be an independent contractor. At no time shall JEG or its agents, contractors or employees be or claim to be employees of the Municipality and, therefore, JEG and its agents, contractors or employees shall not be entitled to or make any claim to any benefits available to any employees of the Municipality.

This Agreement and all services, agreements, expenditures and reimbursements contemplated by and under this Agreement are subject to and shall be consistent with all applicable requirements of (i) the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; (ii) the Public Schools Contracts Law, N.J.S.A. 18A:18A-1, et seq.; (iii) the County College Contracts Law, N.J.S.A. 18A:64A-25.1, et seq.; and (iv) the Local Budget Law N.J.S.A. 40A:4-1, et seq.

A GEA Program under N.J.S.A. 48:3-92 et seq. and the regulations issued thereunder is an alternative to the standard energy procurement process and requires the involvement of township residents, local governments, the BPU, Division of Rate Counsel, Ratepayer Advocate, and Third Party Suppliers (TPS).

In connection with this Agreement, JEG's services will include the following:

(a) Public Outreach

- Work with Municipality to set up and advertise public discussion forums on the GEA Program.
- Send out informational mailing describing the program and inviting residents and businesses to attend town hall meetings for more information.

- Hold town-hall meetings to present and discuss the concept of the GEA Program with residents and businesses.
- Work with Municipality to target businesses that may want to "opt in."
- Develop other avenues for communication with township residents and businesses through the Municipality's website, local business and trade organizations, and other forms of communication.
- Develop other documents such as a "Frequently Asked Questions" page or handout to be displayed and available at town hall.
- Meet with Municipality to decide how to time procurement of bids.
- Decide with Municipality on the appropriate time to pass the GEA Program resolution/ordinance in light of the deadlines in the statute and regulations.
- Work with Municipality and its counsel to prepare necessary resolution/ordinance(s) in connection with the GEA Program.
- Work with Municipality and its counsel to ensure the GEA program complies with the Local Public Contracts Law, N.J.S.A. § 40A:11-1 et seq. ("LPCL"), and the Government Energy Aggregation Act of 2003.

(b) Coordination with BPU and the Local Distribution Company

- Work with BPU, if necessary, for approval of the Local Distribution Company ("LDC") Agreement and opt-out/opt-in notices, where applicable, to customers.
- Work with the LDC to negotiate the LDC aggregation agreement between Municipality and the LDC.
- Meet with the LDC to ensure its compliance with the confidentiality requirement for confidential customer information.

(c) Data Collection

- Obtain account and other needed data information to include in the bid package relating to the GEA Program.

(d) Coordination and Contact with Third Party Suppliers

- Prepare list of potential third party suppliers ("TPS").
- Communicate with the TPS about request for proposal and to encourage as many potential TPS bidders as possible for the Municipality.

(e) Preparation of Request for Proposal Documents

- Prepare the request for proposal ("RFP") specifications that are compliant with the LPCL, the Government Energy Aggregation Act of 2003, and any other applicable laws.
- Present the draft RFP to the BPU and the Division of Rate Counsel for comments, if necessary, at least 30 days before advertising for the RFP.
- Discussion of suggestions by BPU and Division of Rate Counsel and eventual implementation, if necessary, into the RFP.

(f) Administration of the Bid Process & TPS Contract

- Publicize and market the RFP to licensed TPSs.
- Prepare responses to all vendor requests for information and inquiries and prepare any necessary clarifications and addenda to the RFP.
- After review and approval by the Municipality, distribute the responses and addenda to all suppliers.
- Review and provide ranking of TPS bidder qualifications.
- Analyze bid responses.
- Prepare a summary evaluating the qualifications, analysis of bid, and recommendations for contract award.

- Once the Municipality selects a TPS, prepare the TPS contract between Municipality and the TPS.
- Present the draft TPS contract to the BPU and the Division of Rate Counsel for comments, if necessary.
- Discussion of suggestions by BPU and Division of Rate Counsel and eventual implementation, if necessary, into the TPS contract.

(g) Implementation of the GEA Program After Contract Award and Execution.

- Coordinate with the TPS to prepare written notice to residential accounts and opt-out forms for the implementation of the GEA Program.
- Obtain from the LDC list of residential accounts and service addresses that have not already signed up with a TPS; assist in review and edit of customer list to assure consistency with municipal boundaries.
- Coordinate printing and mailing of the GEA Program notice to residential customer list (such printing and mailing to be undertaken by the winning supplier) obtained from LDC.
- Coordinate tallying of "opt out" notices.
- Transfer of list of residential and commercial accounts to designated TPS and verifying change of supplier.
- Set up with municipality contact name, phone number and email address for customer inquiries.

(h) Energy Advisory Services

- Provide ongoing market monitoring and advisory services, including advising Municipality on commodity positions and pricing.

(3) COMPENSATION

For all Services pursuant to Section 2 rendered by JEG as Consultant, the Municipality shall not be required to pay any compensation or fees to JEG. Instead, JEG's compensation shall be the responsibility of and paid directly by the successful TPS bidder. The TPS's bid price shall include an energy agent fee of \$0.0015 per kilowatt hour to be paid directly to JEG on a monthly basis ("Agency Fee") for the prior month's energy supply. The TPS shall include this Agency Fee in its bid prices and the winning TPS shall pay the Agency Fee directly to JEG. No Agency Fees or any fees of any kind shall be collected by JEG unless and until a supply contract is awarded by the Municipality to a TPS.

(4) INSURANCE

Prior to commencing work, the Consultant shall furnish Municipality with a Certificate of Insurance as evidence that it has procured the following insurance coverage:

- (a) Professional Liability - \$ 2,000,000.00
- (b) Workers Compensation and Employer's Liability - \$ 1,000,000.00
- (c) General Liability - \$2,000,000.00 and Municipality is to be listed as Additional Insured with respect to the General Liability policy
- (d) Auto Liability - \$1,000,000.00 (combined single limit) each accident hired autos, non-owned autos
- (e) Municipality must be provided a sixty (60) days notice of cancellation, non-renewal or change in insurance coverage

(5) INDEMNIFICATION

Consultant shall defend, indemnify and hold harmless Municipality, its officers, agents and employees from any and all claims, suits, actions, damages or costs, of any nature whatsoever, 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.

JEG is acting in a consulting capacity and any opinions, advice, forecasts, or analysis presented by JEG are based on its professional judgment and do not constitute a guarantee. In no event shall damages to

Municipality exceed the amount of Agency Fees received by JEF from the TPS. In no event shall Municipality or JEG be responsible for any special, indirect or consequential damages arising under or in connection with the services provided pursuant to this Agreement.

(6) TERMINATION

Municipality may terminate this agreement for cause upon thirty (30) days written notice delivered to Consultant by certified mail, return receipt requested if Consultant materially breaches any terms of this agreement and does not, within the thirty (30) days written notice period, take reasonable steps to cure the breach. All Agency Fees from TPS as described in Section 3, for supply agreements executed pursuant to JEG's efforts under this Agreement and/or prior to termination, shall survive termination of this Agreement.

(7) GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of New Jersey and any disputes under this agreement shall be heard in a court of competent jurisdiction in the State of New Jersey.

(8) DISCLOSURE OF CONTRIBUTIONS

Starting in January 2007, all business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

(9) MISCELLANEOUS

The following miscellaneous provisions shall apply to this Agreement:

- (a) Modification - this Agreement may not be amended, altered or modified in any manner except in writing signed by the parties hereto.
- (b) Invalid Clause - the invalidity of any clause contained herein shall not render any other provision invalid.

- (c) Entire Agreement - this Agreement shall consist of the entire Agreement of the parties and it supersedes and replaces any prior agreements or representations, whether oral or written.
- (d) Assignability - this Agreement and all rights, duties and obligations herein may not be assigned by the Consultant to any person or entity without approval of Municipality.
- (e) Waiver - it is understood and agreed by the parties that a failure or delay in the enforcement of any of the provisions of this Agreement by either of the parties shall not be construed as a waiver of those provisions.
- (f) Binding Agreement - this Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors, or assigns.

(10) CONFIDENTIALITY

Both Municipality and JEG agree that information exchanged between the parties, and not publicly available, shall be deemed proprietary to the disclosing party and shall not be divulged to anyone, other than suppliers participating in the energy or energy related services solicitation or JEG licensor, without written authorization from the disclosing party, with the exception of Aggregate Information gathered by JEG in the course of its operation. "Aggregate Information" is information that describes the habits, pricing data, usage patterns and/or demographics of Municipality and other users as a group but does not reveal Municipality's identity. This confidentiality requirement, however, shall not prohibit Municipality from disclosing the information to its accountants or attorneys, if any, or to tax agencies or as otherwise required by the Open Public Records Act ("OPRA") or other similar law. Prior to disclosing any confidential information to any individuals and entities, pursuant to OPRA, or other similar law with the exception of tax agencies, the court and government agencies, as set forth above, the Municipality agrees to inform JEG, and JEG may determine to oppose said disclosure by seeking the appropriate remedy in the Superior Court of New Jersey.

(11) JEG Reimbursement

JEG will reimburse the Municipality for any direct, invoiced and paid expenses related to the energy aggregation program, as per Title 14:4-6.8 ^(d) The bid specifications shall require that any reimbursement made by the Third Party Supplier and/or Energy Agent to the government aggregator for expenses shall be made only for costs actually incurred by the government aggregator, in establishing or operating the energy aggregation program, as reflected in invoices or vouchers authorized and paid by the government aggregator. Bid specifications shall not include provisions for the payment by a Third Party Supplier and/or Energy Agent of concession fees, finders' fees or other direct monetary benefits to the government aggregator. The Municipality must notify JEG prior to committing funds outside the normal business

process of the Municipality. JEG will also pay all potential charges from PSE&. JEG agrees to pay all submitted proof of paid invoices within 60 days of receipt, however, all payments will be made in the Municipality's fiscal year if proof provided with 30 days prior to end of that fiscal year.

In addition to JEG's reimbursement policy, JEG will accept and pay invoices directly from LDC's (PSE&G, ACE, JCP&L). Only invoices from PSE&G will be accepted. JEG agrees to pay all submitted invoices within 60 days of receipt.

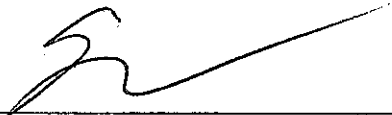
(12) EXCLUSIVITY

For a period commencing on the date of the execution of this Agreement and expiring on the earlier of (i) five (5) years after execution of this Agreement or (ii) execution of any supply contract between the Municipality and a third-party supplier that was entered into pursuant to JEG's services under this Agreement, Municipality agrees that it shall not engage any other person or entity other than JEG, whether a licensed energy agent/consultant or not, to render the Services as defined in Section (2).

IN WITNESS WHEREOF, the Municipality has caused this Agreement to be duly executed in its name and on its behalf by the _____ and the Consultant has caused this Agreement to be duly executed on its behalf by a duly authorized officer all as of the day and year first above written.

Acknowledged and agreed to:

MUNICIPALITY:



Dated: 7-10-14

CONSULTANT:

_____ Dated: _____