

ORDINANCE NO. 5-2016

**Municipal Aggregation Consulting Services Agreement**

This Municipal Aggregation Consulting Services Agreement ("Agreement") is made and entered into and effective on this 19 day of July, 2016 ("Effective Date") by and between the Village of Ansonia, Ohio ("Municipality"), an Ohio Municipal Corporation, with offices located at 202 N. Main St. and Supernova Partners, LLC, Affordable Gas & Electric Company, LLC, a Illinois Limited Liability Company ("Consultant"), with its office and principal place of business located 10749 E Garden Rd, Mt. Vernon, IL 62864. (Municipality and Consultant may be collectively referred to as the "Parties.")

**Recitals**

WHEREAS, Municipality desires to engage Consultant as its exclusive provider of specific consulting and procurement services related to the residential and small commercial electric and gas accounts located in the Village of Ansonia, Ohio, as more completely defined herein.

WHEREAS, Municipality desires, pursuant to 4928.20 (electric) and 4929.26 (gas) of the Ohio Revised Code, with administrative rules in 4901:1-21-16 & 4901:1-21-17 (electric), and 4901:1-28 (gas) of the Ohio Administrative Code (the "Act"), to operate an electric and/or natural gas aggregation opt-out program for residential and small commercial retail customers, by submitting a referendum to its residents to determine whether or not the aggregation program shall operate as an opt-out program for residential and small commercial retail customers. If the majority of the electors voting on the referendum vote in the affirmative, then Municipality may implement an opt-out aggregation program for residential and small commercial retail customers ("Municipal Aggregation Program").

WHEREAS, a Municipal Aggregation Program would give Municipality the authority to enter into an electric and/or natural gas supply power contract on behalf of residents and small businesses with an electric and/or natural gas wholesale supplier in the Village of Ansonia, OH who have not opted out of said program with the intent to secure a lower rate for electric and/or gas service, yielding reduced electric and/or natural gas bills for its residents and small businesses ("Governmental Contract").

WHEREAS, Municipality desires for Consultant to assist Municipality with its effort to place a referendum on the ballot, its Municipal Aggregation Program, in soliciting bids from wholesale electric and/or natural gas suppliers, and in executing a Governmental Contract.

WHEREAS, Consultant desires to perform the Services and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

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### Agreement

#### **I. Services Offered.**

Electricity/Natural Gas Residential and Small Commercial opt-out consulting services, including but not limited to preparation and management of opt-out notices, scrubbing of eligibility customer lists, and supervision of all other notices and publications required under the Act to facilitate the adoption and operation of the Program.

In addition, Consultant shall perform the following activities (collectively, the "Services") in a manner consistent with the best practices established for electrical aggregation program and natural gas aggregation consulting services:

##### **a. Pre-Referendum Education & Marketing via**

1. Web links to educational videos and clippings regarding Municipal aggregation
2. Local radio spots
3. Newspaper interviews and press releases
4. Municipal newsletters
5. Public hearings
6. Community meetings, Chamber of Commerce, Local high school sporting events
7. Political campaign signs
8. Informational flyers

##### **b. Post-Approval Services**

1. Work with Village officials on constituent communications
2. Preparation and filing of all initial and ongoing PUCO required paperwork, certifications, etc.
3. Work with Utilities to develop eligible customer list
4. Develop bid specifications for RFP to multiple wholesale suppliers
5. Advising on any necessary compliance issues with the Public Utilities Commission of Ohio
6. Negotiating fees for the Village with winning suppliers
7. Assist with general contract negotiations
8. Post-purchase monitoring and consulting

#### **II. Obligations of Municipality.**

Municipality shall:

- a. Provide access to all necessary information and documentation as required by Consultant in support of the effort to place a referendum on the ballot, its Aggregation Program, in soliciting bids and in executing a Governmental Contract;

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- b. Use best efforts to secure access to all necessary information and documentation as required by Consultant in support of the effort to place a referendum on the ballot, its Aggregation Program, in soliciting bids, and in executing a Governmental Contract which is not in the custody or control of Municipality;
- c. Use best efforts to secure access for entry upon public and private property as required to perform the Services of Consultant; and
- d. Promptly notify Consultant if Municipality discovers any material defects in the Aggregation Program or any breach of the Governmental Contract.
- e. Approve an ordinance to put the opt-out referendum on the ballot on the next election.
- f. Conduct public hearings and adopt a Plan of Operation and Governance, each as required by the Act.

### III. Term and Termination.

This Agreement shall commence on the 19 day of July, 2016 and shall terminate:

- a. At the conclusion of a Governmental Contract provided that Municipality sends written notice of its intention to terminate this Agreement at least ninety (90) days prior to the conclusion of the Governmental Contract, otherwise, this Agreement will stay in full force and effect for the renewal period of the Governmental Contract; or
- b. Upon the mutual written agreement of the Parties.

### IV. Payment.

Municipality agrees that after a competitive bidding process and execution of a Governmental Contract that Consultant will be paid by the selected electric wholesale supplier at an industry-standard rate of 0.00075 per kWh (volumetrically) as a commission fee for the electricity purchased during the duration of the Governmental Contract. Similarly, Consultant will be paid by the selected natural gas wholesale supplier at a rate of 0.005 per CCF as a commission fee for the natural gas purchased during the duration of the Governmental Contract. Municipality shall not be obligated to pay any other fees or reimburse any expenses to Consultant, but Municipality is required to only accept bids from electric and/or natural gas wholesale suppliers who pay commission fee rates acceptable in the industry and to Consultant.

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### V. Relationship of the Parties.

The parties acknowledge and agree that Consultant is an independent contractor and is not an agent or employee of Municipality. Nothing in this Agreement shall be construed to create a relationship between Consultant and Municipality of a partnership, association, or joint venture.

### VI. Indemnification.

- a. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the Consultant agrees to indemnify, defend and save Municipality, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury claimed to arise from a negligent act, error or omission by the Consultant or its employees.
- b. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless Municipality, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses arising out of the acts or omissions of the Consultant, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused to in whole or in part by the acts or omissions of the Consultant, its agents, or anyone directly or indirectly employed by them.

### VII. Insurance.

- a. Consultant shall secure and maintain, at their own expense, errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect itself from any claim arising out of the performance of professional services and caused by negligent acts or omissions for which the Consultant may be legally responsible.
- b. In addition to errors and omissions insurance, Consultant shall also secure and maintain, at its own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- c. Consultant shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.

### VIII. Compliance with the Law

Notwithstanding any other provisions of this Agreement, it is expressly agreed and understood

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that in connection with the performance of this Agreement that Consultant shall comply with all applicable federal, state, city and other requirements of law. Consultant shall also at its expense secure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful fulfillment of its Services. Municipality shall have the right to audit any records in the possession or control of the Consultant to determine Consultant's compliance with the provisions of this paragraph.

### **IX. Taxes.**

Consultant is subject to and responsible for all applicable federal, state, and local taxes. Municipality represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Consultant upon written request.

### **X. Nonwaiver.**

The failure of either party at any time to require the performance by the other part of any provision of this Agreement shall in no way affect that party's right to subsequently enforce that provision.

### **XI. Entire Agreement / Amendment.**

This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

### **XII. Exclusive Agreement.**

Municipality agrees that during the term of this Agreement, it shall not directly or indirectly solicit, initiate or encourage submission of further proposals or offers from, enter into any agreements with, or accept the services of, any person or entity, for professional services that are substantially similar to the Services to be performed by Consultant pursuant to this Agreement. Consultant shall serve as Municipality's exclusive provider of the Services during the term of this Agreement.

### **XIII. Confidential and Proprietary Information.**

Notwithstanding anything to the contrary set forth herein, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature. The Parties agree that any information disclosed by a Party and designated as proprietary and

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confidential shall only be disclosed to those officials, employees, representatives, and agents of the other Party that have a need to know in order to administer and enforce this Agreement. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to a Party's corporate structure and affiliates, marketing plans, financial information, or other information that is reasonably determined by a Party to be competitively sensitive. A Party may make proprietary or confidential information available for inspection but not copying or removal by the other Party's representatives. Compliance by the Municipality with the Ohio Open Records Law, §149.43 et seq. ("Ohio FOIA"), including compliance with an opinion or directive from the relevant Ohio agencies under the Ohio FOIA, or with a decision or order of a court with jurisdiction over the Municipality, shall not be a violation of this Section and Municipality shall have no duty to litigate or defend any action against it under the Ohio FOIA.

### **XIV. Disputes and Governing Law.**

The Parties intend that this Agreement may be enforced at law or by suit for specific performance. In the event that it becomes necessary to file suit in a court of law or chancery to enforce the terms of this Agreement, the prevailing party shall be awarded their reasonable attorneys' fees in pursuit of his or her claim. This agreement shall be governed by and construed in accordance with the federal laws of the United States of America and internal laws of the State of Ohio applicable to contracts made and to be performed in such state (without regard to the principle of conflicts of law applicable under Ohio law). It is the intent of the parties that to the fullest extent permitted by law, the laws of the State of Ohio shall govern this Agreement.

### **XV. Severability**

If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

### **XVI. Paragraph Headings**

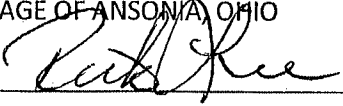
Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the 19 day of

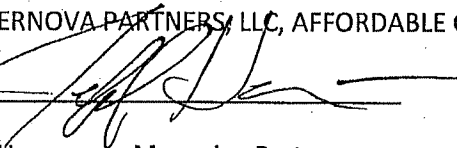
July, 2016.

VILLAGE OF ANSONIA, OHIO

BY: 

Its: Mayor

SUPERNOVA PARTNERS, LLC, AFFORDABLE GAS & ELECTRIC COMPANY, LLC.

BY: 

Jeff Haarmann, Managing Partner