



R.D. #1, 99 Greenbank Road
Boonton NJ 07005-9602
Telephone: (973) 263-1555
Facsimile: (973) 263-9068

September 19, 2024

Steve Gabel, President
Gabel Associates
417 Denison Street
Highland Park, NJ 08904

Dear Mr. Gabel,

Attached, please find the 2024 Contract for the RVRSA. Please print, sign, and return two original contracts to RVRSA. The RVRSA will send you back one (1) original executed contract for your records. Please include a current W-9, a State of New Jersey Business Registration Certificate and proof of Liability Insurance. Also, in accordance with the Affirmative Action provision, provide one of the three documents listed below:

1. Letter of Federal Affirmative Action Plan Approval
2. Certificate of Employee Information Report
3. Employee Information Report Form AA302

Please call me at 973-263-8319 or email me at jmondsini@rvrsa.org should you have any questions or concerns.

Thank You,

A handwritten signature in blue ink, appearing to read "JoAnn Mondsini", is written over the printed name.

JoAnn Mondsini
Executive Director
RVRSA

ENERGY AGENT AGREEMENT

This Energy Agent Agreement (hereinafter "Agreement") made as of this 12th day of September 2024 between: Rockaway Valley Regional Sewerage Authority, having offices at 99 Greenbank Road, Boonton, NJ 07005 (hereinafter "Authority"); and Gabel Associates, 417 Denison Street, Highland Park, NJ 08904 (hereinafter "Agent").

FACTUAL RECITALS

WHEREAS, the Authority requires the services of an "Energy Agent," as defined in the "Electric Discount and Energy Competition Act," (P.L.1999, c. 23) ("Act") to arrange for the sale of retail electricity to Authority, and to assist Authority in functioning as a "Authority Aggregator" as the term is defined by the Act; and

WHEREAS, Agent is a duly registered Energy Agent pursuant to the Act; and

WHEREAS, Authority has adopted a resolution authorizing the award of this Agreement to Agent as an extraordinary, unspecifiable service without competitive bidding pursuant to N.J.S.A. 40A:11-1 et seq.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, Authority and Agent agree as follows:

A. Services to be Performed by Agent. Agent shall assist Authority in completing an analysis of Authority's energy needs, quantifying Authority's load profile, developing an energy plan for Authority, preparing bid specifications ("Request for Bids", "Bid", or "RFB"), and, upon Authority's approval of the RFB, bidding a contract for the supply of energy to Authority as required by the Act. In addition, Agent shall assist Authority in reviewing and analyzing bids to enable the Authority to determine the most advantageous contract, price and other factors considered. Upon request of the Authority, the Agent shall assist the Authority in exploring and implementing energy aggregation programs not only for the Authority's facilities, but also for other facilities and/or authorities interested in joining an energy aggregation program. More specifically, the services to be provided by Agent to Authority shall include:

- a. Planning
 - i. Discuss the electricity supply pricing products available in the retail electricity market
 - ii. Prepare consent forms as may be required by Sections 43-45 of the Act
 - iii. Attend public hearings and meetings, as required
 - iv. Obtain usage data through use of the approved Usage Authorization Form
 - v. Check usage data for errors and completeness
 - vi. Perform a usage data analyses to determine the benefits of proposed pricing products
- b. RFB Development
 - i. Confirm the status of all Aggregation participants
 - ii. Review the status of any third party supplier ("Supplier") with the New Jersey Board of Public Utilities ("BPU")
 - iii. Organize monthly and interval usage data files for the RFB
 - iv. Draft the RFB

- v. Draft the Electricity Supply Contract ("ESC")
- vi. Finalize the RFB and ESC (requires Authority input)

c. RFB Process

- i. Issue an RFB Notice as required by Local Public Contracts Law
- ii. Respond to inquiries related to the RFB
- iii. Send the bid to qualified Suppliers
- iv. Respond to inquiries from qualified Suppliers
- v. Attend the Bid opening on the date set forth in the RFB
- vi. Evaluate the Bids received by Authority
- vii. Process and obtain consent forms as may be required by Sections 43-45 of the Act
- viii. Assist in the award of the ESC, as may be required
- ix. Coordinate the execution of the ESC between Authority and Supplier
- x. Ensure Authority accounts are properly registered with local distribution companies

d. ESC Implementation and Administration

- i. Conduct an on-going energy needs evaluation for Authority
- ii. Monitor the contract for Supplier's services and standing with the BPU
- iii. Monitor and advise the Authority of developments in regulatory policy, energy legislation, and energy marketplace
- iv. Perform customer relations services pertaining to contract matters with Supplier and the local distribution company
- v. (For variable rate electricity supply pricing products) Provide the Authority with recommendations and market data related to opportunities to fix future electricity prices / return to variable rate electricity supply pricing products

B. Compensation. Agent shall receive no monetary compensation from Authority for the Services to be provided pursuant to this Agreement. The Authority and Agent agree that the ESC between the Authority and the Supplier shall provide that: 1) the Supplier shall pay Agent a monthly administrative fee ("Monthly Administrative Fee") for each account served at a rate of \$0.0005 per kilowatt-hour for all months of the ESC; 2) the Monthly Administrative Fee shall be based upon the actual metered usage of the Authority; 3) the Monthly Administrative Fee shall be included in the bid price contained in the ESC; 4) the Monthly Administrative Fee shall be paid by the Supplier on or before the 25th day of each month following the month of activity during the term of the ESC, accompanied by a summary accounting (in a format to be agreed upon by Agent and Supplier); 5) the Supplier shall pay interest at the rate of 1.5% per month on the balance of any Monthly Administrative Fee that is not paid to Agent when due; 6) the Agent shall have the right to exercise any remedy available at law or equity against the Supplier to enforce payment of the Monthly Administrative Fee plus interest, together with the cost of collection from Supplier (including but not limited to reasonable attorney's fees and costs), from the date due until paid; and 7) the Supplier waives any claims against the Authority and Agent for any actual, special, indirect or consequential damages arising out of or in connection with this Agreement, except for non-payment of service charges by the Authority.

C. Obligation of Agent. Agent shall have the obligation to assure that any ESC between the Authority and a Supplier incorporates the provisions of Paragraph B herein or such modifications thereto acceptable to the Authority, Agent and the Supplier. Authority shall

have the right to conclusively assume that any proposed ESC with a Supplier submitted to the Authority by Agent is acceptable to Agent, unless Agent specifies in writing that such ESC is not acceptable and the reasons therefore.

- D. Duration and Exclusivity. The term of this Agreement shall begin on November 1, 2024 and end on July 31, 2026; except that the requirement for payment by a selected Supplier shall continue for the duration of the ESC. Agent shall be the exclusive Energy Agent for Authority during this term. The term of this Agreement may be extended upon the mutual consent of the Authority and Energy Agent, in accordance with applicable law.
- E. BPU Regulations. Authority and Agent acknowledge that the BPU is continually in the process of promulgating regulations for implementation of the provisions of the Act. In the event that any provisions of this Agreement are inconsistent with any regulations that are duly promulgated by the BPU, Authority and Agent agree to utilize their best efforts to amend this Agreement to bring it into conformity with such regulations, while at the same time, conforming to the original intent of this Agreement, to the extent reasonably possible.
- F. Authorized Act. All parties hereto agree that the execution of this Agreement is the authorized act of each of the respective parties hereto.
- G. Marginal Captions. Marginal captions are inserted for convenience of reference only, and shall not be construed as defining, modifying or limiting the terms of this Agreement.
- H. Interruption of Service. Authority agrees that Agent shall have no liability to Authority for any losses, damages or costs (including attorneys' fees) that Authority may sustain as a result of an interruption in or discontinuance of energy service by the selected Supplier, or that Supplier's failure to meet, in any other way, the terms and conditions of its ESC with the Authority.
- I. Annual Review of Agreement. Authority and Agent shall annually review the terms and conditions of this Agreement.
- J. Early Termination. The Agreement may be terminated by either party upon the occurrence of any of the following events:
 - a. In the event either party (i) should file a voluntary petition in bankruptcy, (ii) is declared bankrupt, (iii) make an assignment for the benefit of creditors, (iv) becomes insolvent or subject to receivership or has a receiver in bankruptcy appointed for such party or its assets, the other party may elect to terminate this Agreement upon five (5) days' prior written notice to such party.
 - b. Either party may terminate this Agreement for breach of a material term or condition hereof upon giving thirty (30) days written notice identifying the basis for such notice, provided the breaching party shall not have cured such breach within the thirty (30) day period.
 - c. This Agreement may be terminated in the discretion of the Authority if two (2) consecutive bid packages prepared by Agent are not accepted on behalf of the Authority.

- d. This Agreement may be terminated in the discretion of the Authority if bids received in response to two (2) consecutive bid packages prepared by Agent are not accepted on behalf of the Authority and after Agent and Authority are unsuccessful in negotiating an ESC directly with Suppliers in accordance with the Local Public Contracts law.
- K. Indemnification. The Agent agrees to indemnify and hold harmless the Authority from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, attorney's fees and other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character arising out of or relating to any negligent act, error or omission by the Agent in the performance of this Agreement. However, the Agent shall not be responsible to indemnify and hold harmless the Authority for the Authority's own negligent acts, errors or omissions in the performance of this Agreement. Moreover, the Authority acknowledges that advice or analysis presented by Agent are based on Agent's professional judgment and do not constitute a guarantee of result.
- L. Mandatory Equal Employment Opportunity Language. Agent as Contractor agrees to comply with the language set forth in Exhibit A attached to this Agreement.
- M. Retention of Records. Pursuant to N.J.A.C. 17:44-2.2 (see also N.J.S.A. 52:15C-14(d)), Agent shall maintain all documentation related to products, transactions or services under this Agreement for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- N. Business Registration. Pursuant to N.J.S.A. 52:32-44, the Agent shall remit a copy of its New Jersey Business Registration Certificate, or documentation indicating the Agent's compliance with the New Jersey Business Registration Act, to the Authority no later than the execution of this Agreement. The requirement of proof of Business Registration extends down through all levels (tiers) of the Services. The Agent shall comply with the requirements of the Business Registration law. The Agent, as contracting party, agrees to the following mandatory language: No contract shall be entered into by the Authority unless the Contractor provides a copy of its business registration (as defined in N.J.S.A. 52:32-44) in accordance with the following schedule:
- N.J.S.A. 52:32-44 imposes the following requirements on the Agent and all sub-contractors that **knowingly** provide good and services for the Agent in fulfilling this Agreement:
- a. The Agent shall provide written notice to its sub-contractors to submit proof of Business Registration to the Agent;
 - b. Prior to receipt of final payment for the Contracting Unit, the Agent must submit to the Contracting Agency an accurate list of all sub-contractors or attest that none was used;
 - c. During the term of this Agreement, the Agent and its affiliates shall collect and remit, and shall notify all sub-contractors and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

The Agent's, sub-contractor or supplier who fails to provide proof of Business Registration or provides false Business Registration information shall be liable to a penalty of \$25.00 for each day of violation, not to exceed \$50,000.00 for each Business Registration not properly or maintained under a contract with the Authority. Information on the law and its requirements is available by calling (609) 292-9292.

- 0. Compliance with Laws. The Agent shall comply with all laws, ordinances, rules, regulations, requirements and directives of federal, state or municipal governments applicable to and affecting the scope of services contracted for under this Agreement. Moreover, the Agent shall comply with all applicable existing Authority ordinances as may be amended from time to time and with all future ordinances as may be enacted to the extent such ordinances are consistent with state and federal law.
- P. Integration. This Agreement sets forth the entire agreement between the parties hereto with respect to the subject matter hereof, and no prior written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.
- Q. Amendments. This Agreement shall not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.
- R. Neutral Construction. In the event of any dispute concerning the construction or interpretation of this Agreement, this Agreement shall be construed neutrally without regard to events of authorship or negotiation, each party having been given the opportunity to be represented by independent legal counsel of its own choosing.
- S. Severability. The terms, conditions, covenants, and provisions of this Agreement shall be deemed to be severable. If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect.
- T. Successors and Assigns. This Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties hereto.
- U. No Waiver. No failure or delay on the part of any party in exercising any right, power, or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights, powers, or remedies existing at law, in equity or otherwise.
- V. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of New Jersey.
- W. Jurisdiction and Venue. Any controversies or disagreements arising out of, or relating to this Agreement, or breach thereof, shall be resolved in the Morris County Vicinage of the Superior Court of New Jersey.

- X. Authorization. By executing this Agreement, each signatory represents that he or she is a party or has been duly authorized by a party to sign on the party's behalf.
- Y. Attestation. The Agent represents and warrants that it has carefully read each and every provision of this Agreement and that it fully understands all of the terms and conditions contained in each provision of this Agreement. The Agent further represents and warrants that it has entered into this Agreement voluntarily, of its own free will, without any pressure or coercion from any person or entity including, but not limited to, the Authority.
- Z. Precatory Phrases. The precatory phrases ("whereas clauses") are not mere recitals, but are specifically agreed to by the parties and are incorporated herein by reference.
- AA. Headings. The Article and Section headings in this Agreement are included herein for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.
- BB. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute one and the same agreement. A signature affixed by a party to a counterpart of this Agreement and delivered by electronic transmission is valid, binding and enforceable against such party.

IN WITNESS WHEREOF, the Authority and the Agent have executed this Agreement as of the date written above, hereby binding themselves, together with their successors and assigns.

ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY

By: _____
JoAnn Mondsini, Executive Director

Attest:

Janice Fox, Asst. Board Secretary

GABEL ASSOCIATES

By: _____
Steve Gabel, President

Attest:
