

ENERGY AGENT and AUDIT AGREEMENT

THIS AGREEMENT is made as of _____, 2019 by and between **Progressive Energy Group (“PEG”)** a corporation organized under the laws of the State of Delaware, with its place of business at 1981 W Downer Place, Aurora IL 60506, and **the City of Aurora**, an Illinois home-rule municipal corporation (the “CITY OF AURORA”), located at 44 East Downer Place, Aurora IL 60507, the parties having agreed as follows:

WITNESSETH

WHEREAS, PEG is a natural gas and electric energy consulting business, with a sales office located in Aurora Illinois, and such desires to be the exclusive broker of **CITY OF AURORA** for the purposes of acquiring natural gas, electric supply and demand response programs;

WHEREAS, CITY OF AURORA is the second largest City in Illinois with close to 20 million annual kWh of electric use. The City desires to lower its overall utility expenses and try and maintain it green energy sustainable goals;

WHEREAS, PEG has agreed to provide energy consulting and energy audit and procurement services for **CITY OF AURORA** and its affiliates from time to time in return for a commission; and

WHEREAS, CITY OF AURORA desires to procure energy audit and utility rate, rider and tariff review services that assists them in managing their energy costs and lower its overall Utility cost per unit.

NOW THEREFORE, in consideration of the mutual covenants herein contained, **PEG** and **CITY OF AURORA** hereby agree as follows:

ARTICLE I **RESPONSIBILITIES of the PARTIES**

It shall be the responsibility of **PEG** to provide **CITY OF AURORA** an audit and RFP service that will examine several factors including but not limited to:

- Natural Gas Pricing and Procurement
- Electric Pricing and Procurement
- Applicability of Taxes, Utility Rates and Tariff Charges
- Utility Metering Charges
- Demand Response Programs
- Green and Carbon Free Programs
- Illinois Solar for All Programs
- Recommendations for Savings
- Supplier Contract Review and Compliance with Industry Standards
- Execution Strategy for Implementation
- Ongoing Energy Industry Trends and Marketplace Intelligence
- Budget Review and Development for Energy Supply and Delivery

It shall be the responsibility of **CITY OF AURORA** to provide the necessary documents and support needed to complete the energy audit and auction, including:

- Past Electric and Natural Gas Utility Bills
- Past Electric and Natural Gas Supplier Contracts
- Past Demand Response Contracts
- Assist in and approve the Execution Strategy
- Review RFP pricing and Audit Results
- Approve procurement and execution of energy findings

PEG will be the exclusive energy agent, utility bill auditing service, and electric and gas supply procurement service utilized by **CITY OF AURORA** for the term of this agreement. **PEG** understands that **CITY OF AURORA** may use other resources for its sustainability and conservation initiatives.

ARTICLE II **PAYMENT and FEES**

It is understood by both parties **PEG** will be paid a consulting fee by **CITY OF AURORA** as remuneration for the **PEG** consulting services. The fee paid to **PEG** is listed below:

1. \$10,000 for the initial electric sourcing agreement.
 - a. This will only be paid if the City of Aurora saves is at least \$100,000 annually vs. current contract.
 - b. This will only be paid if the City of Aurora electric price is at least 5% lower than West Aurora SD 129 July 9, 2019 electric price.
 - c. This will only be paid after any new contract starts (the earliest would be March 2020).
2. \$3,000 for the initial natural gas sourcing agreement.
 - a. This will only be paid if the City of Aurora saves is at least \$10,000 annually.
3. \$3,000 for the initial Electric Demand Response sourcing agreement.
 - a. This will only be paid if the City of Aurora savings is at least \$10,000 annually.
4. \$3,000 annually for ongoing monitoring of the wholesale electric & natural gas market, legislative and regulatory impacts and franchise account rules that have potential opportunities and threats to the City of Aurora.
 - a. This will only be paid if City agrees there was substantial value provided. This payment is at the sole discretion of the City.

ARTICLE III **MISCELLANEOUS**

Either party can terminate this agreement immediately with cause.

In performing Services under this Agreement, **PEG** and **CITY OF AURORA** are at all times acting and performing as an independent contractor. Nothing in this Agreement is intended nor shall be construed to create an employment, principal-agent, partnership or joint venture relationship between **PEG** and **CITY OF AURORA**. **CITY OF AURORA**

shall neither have nor exercise any direction or control over the methods, techniques or procedures by which **PEG** Services. The sole interest and responsibility of **CITY OF AURORA** is to ensure that the Services shall be performed and rendered in a professional, competent, efficient and timely manner. Each Party shall be solely responsible for the payment of compensation and benefits to its personnel and for compliance with any and all payments of all taxes, social security, unemployment compensation and worker's compensation

All customer, business, financial or other records, papers and documents generated by **CITY OF AURORA**, or generated jointly by **CITY OF AURORA** and **PEG**, in the course of performing the services hereunder, or created by other agents and contractors of **CITY OF AURORA**, are the property of **CITY OF AURORA**. **CITY OF AURORA** shall retain sole and exclusive possession of such documents; **PEG** shall have no right to retain them after this Agreement expires or is terminated.

Both Parties agree and acknowledge that each Party possesses certain confidential information that constitutes a valuable, special, and unique asset. As used herein, the term "confidential information" includes all information and materials belonging to, used by, or in the possession of the Parties relating to its Products, processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and prospective customers, marketing plans, and trade secrets of every kind and character, but shall not include (a) information that was already within the public domain at the time the information is acquired by the other Party; (b) information that subsequently becomes public through no act or omission of the other Party; or (c) records which are subject to disclosure by the City pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1, *et. seq.*). Both Parties agree all of the confidential information is and shall continue to be the exclusive property of the other Party, whether or not prepared in whole or in part by **PEG** or **CITY OF AURORA** and whether or not disclosed to or entrusted to the other Parties custody. **PEG** agrees that **PEG** shall not, at any time following the execution of this Agreement, use or disclose in any manner any confidential information of **CITY OF AURORA**. The provisions of this Article shall survive any termination of this Agreement.

ARTICLE IV **TERM and TERMINATION**

This Agreement shall be effective from the date first herein above written and shall continue in full force and effect for a period of one (1) year from that date and for successive one (1) year period thereafter, unless either Party shall give notice of non-renewal to the other Party not later than thirty (30) days prior to the end of the current one (1) year period.

Notwithstanding any other provision in this Agreement, **CITY OF AURORA** may terminate this Agreement at any time, without cause, upon thirty (30) days' written notice to **PEG**. Upon termination of this Agreement, **CITY OF AURORA's** obligation to pay the compensation described in this Agreement shall cease, effective as of the date of termination; provided, however, that **CITY OF AURORA** shall remain obligated to pay such compensation as has already been incurred or obligated prior to the date of termination.

ARTICLE V
NOTICES

Any notice, request, demand, statement, bill or payment sent pursuant to this Agreement shall be in writing and shall be considered duly delivered when mailed to the address designated below via certified mail, return receipt requested or via email at the address below:

FOR: PROGRESSIVE ENERGY GROUP
1981 W. Downer Place. Suite 402
Aurora, IL 60506
Attn.: Arnold Schramel (Managing Partner)
630-882-6100

FOR: CITY OF AURORA
44 E Downer Place
Aurora, IL 60507
Attn: Martin Lyons, CFO

ARTICLE VIII
ADDITIONAL TERMS

Warranty, Representation, and Expenses. PEG represents and warrants that all services shall be performed in a diligent, professional and workmanlike manner in accordance with standard industry practice. Except as and if expressly provided otherwise in this Agreement, PEG shall (a) furnish all equipment, materials, and labor used to perform the services, and (b) pay and be responsible for all expenses arising from its performance of the services, including but not limited to travel related expenses. If expenses are authorized under any applicable statement of work or order, **CITY OF AURORA** will reimburse PEG for reasonable, verifiable and pre-approved travel expenses pursuant to invoice and proper documentation (e.g. receipts consistent with the **CITY OF AURORA's** customary business expense practices). PEG will be reimbursed only the reasonable cost of coach class domestic airfare, car rental, reasonable lodging, meals and other related necessary and reasonable expenses. Auto mileage will be reimbursed at the standard mileage rate that the federal government reimburses at the time incurred. PEG shall provide **CITY OF AURORA** with original invoices or receipts for all such reimbursable expenses. PEG shall invoice **CITY OF AURORA** for such expense(s) in accordance with the above within thirty (30) days after incurring such expense(s). **CITY OF AURORA** shall pay undisputed invoices for such expenses pursuant to the terms of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*). If expenses incurred hereunder are not invoiced to **CITY OF AURORA** by PEG in accordance with the above within sixty (60) days after such expense(s) have been incurred by PEG, PEG's right to reimbursement and/or payment for such expenses is irrevocably waived.

Insurance. CITY OF AURORA shall not provide insurance coverage of any kind for PEG or name PEG as an additional insured on any of its insurance policies. PEG will maintain, during the Term, all insurance required by law and will deliver to CITY OF AURORA a certificate of insurance evidencing, at a minimum, the insurance limits listed in Exhibit A attached hereto and made part hereof and will keep such insurance in force and effect throughout the Term. PEG will also require its agents, contractors or subcontractors to maintain similar insurance and to furnish CITY OF AURORA, if requested, certificates of insurance. The foregoing shall not limit CITY OF AURORA's ability, at its discretion, to make claims under its own insurance coverage.

Compliance.

(a) PEG and each of its individuals or third-party partners performing work for CITY OF AURORA pursuant to this Agreement will fully comply with all applicable governmental, legal, regulatory, professional, and accreditation requirements in connection with the performance of services under this Agreement.

(b) At all times during the term of this Agreement, PEG shall comply, and shall cause each of its individuals or third-party partners performing work for CITY OF AURORA pursuant to the Agreement to comply, with CITY OF AURORA's Standards of Conduct as the same may be changed from time to time. PEG and each of its individuals or third-party partners performing work for CITY OF AURORA pursuant to the Agreement shall certify in writing that he/she/it has received, read, understood and shall abide by CITY OF AURORA's Standards of Conduct.

**ARTICLE VIV
GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois without regard to principles of conflicts of law, and venue for any legal disputes arising hereunder shall be proper only in the Circuit Court of Kane County, Illinois.

IN WITNESS HEREOF:

The Parties hereto have executed this Agreement on the date herein provided:

PROGRESSIVE ENERGY GROUP

CITY OF AURORA

Name: _____

Name: _____

Signed: _____

Signed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

INSURANCE

Within thirty (30) days of executing the Agreement, PEG will deliver to CITY OF AURORA a Certificate of Insurance evidencing these insurance minimums (listed below in US dollars) and will keep such insurance in place throughout the Term:

General Liability - Comprehensive Form

General Aggregate \$2,000,000

Each Occurrence \$1,000,000

Employer Liability

Each Occurrence \$1,000,000

Network Security Liability

Aggregate \$2,000,000

Each Occurrence \$1,000,000

Automobile Liability - Any Auto

Combined Single Limit (Bodily Injury/Property Damage) \$1,000,000

Worker's Compensation and Employer's Liability

Statutory Limits of Worker's Compensation in the amounts required under Illinois law.

The following two requirements must be met to avoid purchase order processing delay:

- 1) The designated Certificate Holder must be the CITY OF AURORA entity listed in the preamble of this Agreement and/or the pertinent SOW.
- 2) The following statement must appear above the certificate holder block:

City of Aurora is named as an Additional Insured on all coverages, except Worker's Compensation.

All insurance required hereunder must be placed with companies which are AM Best rated A- or better and which are licensed to do business in the state(s) where the work or service will be performed. In addition, PEG must give CITY OF AURORA at least thirty (30) days prior written notice in the event of any cancellation, material change or reduction of the stipulated insurance coverages. It is understood and agreed that the purchase of the above insurance shall not in any way limit PEG's liability and shall not relieve PEG of any responsibility, including, but not limited to, damages for claims in excess of such limits.