

**ORDINANCE 2011-19
VILLAGE OF BUCKEYE LAKE, OHIO**

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BUCKEYE ENERGY BROKERS, INC. FOR AGGREGATION CONSULTING SERVICES AND ANY OTHER REQUIRED SERVICES RELATED TO ELECTRIC UTILITY DEREGULATION FOR THE VILLAGE OF BUCKEYE LAKE, RATIFYING ANY SUCH SERVICES HERETOFORE PERFORMED AND DECLARING AN EMERGENCY.

NOW THEREFORE, BE IT ORDAINED by the legislative authority of the Village of Buckeye Lake that following an affirmative vote of at least two-thirds (2/3) of the Council to dispense with the requirement of the Village of Buckeye Lake Charter section 4.04 to read an ordinance on three separate days. By the legislative authority of the Village of Buckeye Lake:

Section 1. That the Mayor is hereby authorized and directed to enter into an agreement with Buckeye Energy Brokers, Inc. for aggregation consulting services and any other required services related to electric utility deregulation for the Village of Buckeye Lake and ratifying any such services heretofore performed.

Section 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, thereof, for the reason that it is immediately necessary to contract consulting services for advice in a rapidly changing technical area, and provided it receives the necessary affirmative votes as required by the passage and approval by the Village of Buckeye Lake Council; otherwise it shall take effect and be in force at the earliest period allowed by law.

PASSED: November 28, 2011

ATTEST:



CHARLENE HAYDEN, Council President



RICHARD E. BAKER, Mayor



**AGREEMENT FOR OPT-IN
ELECTRIC AGGREGATION SERVICES**

This Agreement ("Agreement") is made and entered into as of the last date written below, ("Commencement Date"), by and between **Buckeye Energy Brokers** (hereafter referred to as "Broker") and Village of Buckeye Lake, (hereafter referred to as "Client").

WHEREAS, Client is interested in reducing its overall energy costs by Opt-In aggregation and aggregating its government owned electric accounts; and

WHEREAS, Broker is certified by the Public Utilities Commission of Ohio and offers energy brokerage and electric aggregation services ("Services") that may reduce the cost per energy unit consumed; and

WHEREAS, Client hereby agrees to utilize Broker 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.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the parties hereto agree as follows:

1.0 Particulars of Service.

1.1 Broker shall provide energy related Services, including but not limited to the following:

- 1.1.1 Design Opt-In Notification Forms and provide marketing support
- 1.1.2 Attend two public hearings, upon request
- 1.1.3 Load data collection and verification
- 1.1.4 Energy savings estimates
- 1.1.5 Energy buying and regulatory consultation
- 1.1.6 Write customized Request for Proposals (RFP)
- 1.1.7 All contact with potential energy suppliers
- 1.1.8 Release all necessary client information to switch energy suppliers
- 1.1.9 Pre-qualify any energy suppliers wishing to bid on the RFP
- 1.1.10 Contract negotiation and closing with selected supplier
- 1.1.11 File required PUCO reports and monitor energy cost savings with quarterly reports.

1.2 Broker will provide these Services in the following area(s) and/or account number(s):
_____ Village of Buckeye Lake _____.

2.0 Compensation.

- 2.1 An administrative fee of .5 mills/kWh consumed in the Client's Area payable by the selected supplier on at least a quarterly basis for the length of the Service Agreement. Client agrees that this fee be written in the Request For Proposal for electric generation service. Only suppliers agreeing to the administrative fee would be eligible to bid.

3.0 Independent Agent.

- 3.1. Broker 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. 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 Broker agrees to indemnify and hold harmless Client from and against any and all liability, costs, damages, expenses, fees, fines or penalties in connection with Broker employee or Broker contractor or agent claims of benefits, withholding obligations, payroll taxes, workers' compensation and occupational illness.

4.0 Term.

- 4.1. This Agreement shall be effective upon execution by both parties and shall remain in effect for three years or until the end of the Master Service Agreement with the selected supplier which ever comes later.
- 4.2. Unless either party has requested to terminate this agreement at least six months prior to expiration, it shall renew for subsequent one year terms and a request for proposal will be sent to potential suppliers.
- 4.3. Client assumes all obligations to arrange for its electric generation service upon termination of this Agreement.

5.0 Limitation of Liability.

- 5.1. Neither Party shall be liable to the other for incidental, consequential, punitive, exemplary or indirect damages, lost profits or other business interruption damages, in tort, contract or otherwise.
- 5.2. Each Party, for itself and its successors and assigns, shall indemnify and hold harmless the other Party from and against any and all claims, actions, liabilities, losses and damages, including reasonable attorney's fees, asserted by any person or persons, including employees and contractors of the indemnifying party, for property damage, personal injury or death related to the performance of this Agreement,

except and to the extent caused by the negligence or intentional misconduct of the indemnified Party.

- 6.0 **Force Majeure.** Neither party shall be liable for any delays or failures in performance due to circumstances beyond their respective controls.
- 7.0 **Confidentiality.** Except for matters of public record, information already within the other 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, Client agrees to keep confidential all information, including pricing and any data collected hereunder, unless expressly agreed to in writing by Client and Broker. In the event that Client becomes required, in the manner specified above, to disclose any confidential information, Client shall provide prompt written notice to Broker so that Broker may timely seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, Client 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 treatment will be accorded such confidential treatment.
- 8.0 **Compliance with Laws, Permits, and License Requirements.** Broker shall, at its sole cost and expense, comply with all federal, state, and local laws applicable to its work and shall procure all applicable licenses and permits necessary for the fulfillment of its obligations under this Agreement.
- 9.0 **Assignment.** Client and Broker 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.
- 10.0 **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 both parties and attached hereto.
- 11.0 **Notices.** All notices hereunder shall be in writing and shall be delivered by certified mail, return receipt requested, or by overnight carrier to the following addresses:

As to Broker:


Buckeye Energy Brokers, Inc.
8870 Darrow Road #F106
Twinsburg, Ohio 44087

As to Client:

12.0 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.

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.

Village of Buckeye Lake
CLIENT

By: 
Print: RICHARD E BAKER
Its: MAYOR
On: 11/20/11

Buckeye Energy Brokers, Inc.
BROKER

By: _____
Print: _____
Its: _____
On: _____