

VILLAGE OF LONG GROVE

RESOLUTION NO. 2012-R-04

**A RESOLUTION APPROVING AN INTERGOVERNMENT AGREEMENT  
BETWEEN AND AMONG THE VILLAGE OF ARLINGTON HEIGHTS,  
VILLAGE OF BUFFALO GROVE, VILLAGE OF LINCOLNSHIRE, VILLAGE OF LONG  
GROVE, VILLAGE OF PALATINE, VILLAGE OF VERNON HILLS AND VILLAGE OF  
WHEELING CONCERNING ELECTRIC AGGREGATION**

**WHEREAS**, the Village of Long Grove ("**Village**") is an Illinois municipal corporation; and

**WHEREAS**, Article VII, Section 10 of the 1970 Constitution of the State of Illinois authorizes units of local government to contract or otherwise associate among themselves "to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance" as well as to use their revenues, credit and other resources for intergovernmental activities; and

**WHEREAS**, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, also authorizes the joint use and enjoyment of the powers, privileges, functions, and authority of local governments; and

**WHEREAS**, Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 ("**Act**"), permits the corporate authorities of the Village, if authorized by referendum, to adopt an ordinance creating a program to allow the Village to solicit bids and enter into service agreements for the sale and purchase of electricity and related services and equipment to residential and small commercial customers in the Village who do not chose to opt-out ("**Electricity Aggregation Program**"); and

**WHEREAS**, the Act authorizes municipalities to jointly operate an Electricity Aggregation Program; and

**WHEREAS**, the Village of Long Grove and Villages of Arlington Heights, Lincolnshire, Buffalo Grove, Palatine, Vernon Hills, and Wheeling share a common interest in pursuing an Electricity Aggregation Program and pursuing joint action and intergovernmental cooperation for

a joint power supply bid and have prepared an intergovernmental agreement to facilitate these joint efforts (the "**Agreement**"); and

**WHEREAS**, the President and Village Board have determined that it is in the best interests of the Village and its residents to enter into the Agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS**, as follows:

**SECTION ONE: Recitals.** The foregoing recitals are hereby incorporated into and made a part of this Ordinance as if fully set forth.

**SECTION TWO: Approval of Agreement.** The Agreement shall be, and is hereby, approved in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by Village Counsel.

**SECTION THREE: Execution.** The Village Manager and the Village Clerk shall be, and are hereby, authorized and directed to execute and attest, on behalf of the Village, the Agreement and all necessary documentation related thereto.

**SECTION FOUR: Effective Date.** This Resolution shall be in full force and effect upon its passage and approval by a majority of the members of the Village Board.

PASSED THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2012.

AYES: (5) Trustees Barry, Schmitt, Underwood, Wachs and Weber

NAYS: (0) None

ABSENT: (1) Trustee Marshall

APPROVED THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2012.

\_\_\_\_\_  
Village President, Maria Rodriguez

ATTEST:

\_\_\_\_\_  
Village Clerk, Karen Schultheis

**EXHIBIT A**  
**Agreement**

1-17-2012

**INTERGOVERNMENTAL AGREEMENT**  
**BY, BETWEEN AND AMONG THE VILLAGE OF ARLINGTON HEIGHTS, VILLAGE OF BUFFALO GROVE,**  
**VILLAGE OF LINCOLNSHIRE, VILLAGE OF LONG GROVE, VILLAGE OF PALATINE, VILLAGE OF VERNON**  
**HILLS AND VILLAGE OF WHEELING CONCERNING ELECTRIC AGGREGATION**

**THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”)** is made and entered into as of the 14<sup>th</sup> day of February, 2012, by, between, and among the **VILLAGE OF ARLINGTON HEIGHTS**, an Illinois municipal corporation (“*Arlington Heights*”), **THE VILLAGE OF BUFFALO GROVE**, an Illinois home rule municipal corporation (“*Buffalo Grove*”), **THE VILLAGE OF LINCOLNSHIRE**, an Illinois municipal corporation (“*Lincolnshire*”), **THE VILLAGE OF LONG GROVE**, an Illinois municipal corporation (“*Long Grove*”), the **VILLAGE OF PALATINE**, an Illinois municipal corporation (“*Palatine*”), the **VILLAGE OF VERNON HILLS**, an Illinois municipal corporation (“*Vernon Hills*”), and the **VILLAGE OF WHEELING** an Illinois municipal corporation, (“*Wheeling*”), (collectively, the “*Parties*”).

**WITNESSETH:**

**WHEREAS**, Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 (“*Act*”), authorizes the corporate authorities of a municipality to establish a program to aggregate electrical loads of residential and small commercial retail customers and to solicit bids and enter into service agreements to facilitate the sale and purchase of electricity and related services and equipment for those electrical loads (“*Electric Aggregation Program*”); and

**WHEREAS**, pursuant to the Act, municipalities may, if authorized by referendum, operate an Electric Aggregation Program as an “opt-out” program that applies to all residential and small commercial retail electrical customers who do not affirmatively choose not to participate; and

**WHEREAS**, the Act authorizes municipalities to jointly operate an Electric Aggregation Program and does not prohibit municipalities from entering into an intergovernmental agreement to aggregate electric loads for those programs; and

**WHEREAS**, on March 20, 2012, Arlington Heights, Buffalo Grove, Lincolnshire, Long Grove, Palatine, Vernon Hills and Wheeling seek to establish by referendum “opt-out” Electric Aggregation Programs pursuant to the Act; and

**WHEREAS**, although each Party will operate a separate Electric Aggregation Program for its residents, the Parties have individually and collectively determined that combining the bidding and contracting process to obtain the supply of electric power for their Electric Aggregation Programs could provide potential savings through a joint project bid (“*Joint Power Supply Bid*”); and

**WHEREAS**, the Parties desire to establish an Intergovernmental Agreement by, between, and among Arlington Heights, Buffalo Grove, Lincolnshire, Long Grove, Palatine, Vernon Hills and Wheeling to facilitate joint action and intergovernmental cooperation for the Joint Power Supply Bid; and

**WHEREAS**, to achieve these and other related objectives, the Parties desire to continue to utilize the powers and authority granted to them, individually and collectively, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970; the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and Section 1-92 of the Act, 20 ILCS 3855/1-92; and

**WHEREAS**, after full consideration of all planning, fiscal, and other intergovernmental issues affecting this matter, each of the Parties has determined that it is in the best interests of its citizens and of the general public welfare that this Agreement be executed and implemented by the Parties; and

**WHEREAS**, the Parties have agreed to participate equally in paying for the hiring of a consultant and the Joint Power Supply Bid; and

**WHEREAS**, the Parties have each approved this Agreement by an ordinance or resolution duly adopted by the Party's corporate authorities; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein made and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and pursuant to all applicable statutes and local ordinances, specifically including, but without limitation, Article VII, Section 10 of the Illinois Constitution of 1970; the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and Section 1-92 of the Act, 20 ILCS 3855/1-92, the Parties do hereby agree as follows:

**SECTION 1. RECITALS.**

The foregoing recitals are, by this reference, incorporated into and made a part of this Agreement.

**SECTION 2. PURPOSE.**

This Agreement is made for the purpose of establishing all of the authority, powers, and resources necessary and convenient to allow the Parties to jointly and efficiently address common bidding and contracting for the Joint Power Supply Bid. This Agreement is further intended to allow the Parties to jointly seek available local, state, and federal funds and other resources, if available, to assist in addressing the Joint Power Supply Bid identified by the Parties as necessary, and being appropriate for, the joint action of the Parties.

**SECTION 3. TERM; OTHER PARTIES.**

- A. **Effective Date.** This Agreement shall take effect as of the date stated in the first paragraph of this Agreement. .
- B. **Term.** The term of this Agreement shall be one (1) year from the effective date of this Agreement (the "***Initial Term***"). Unless this Agreement is terminated as set forth in Section 6 herein, the Agreement shall automatically renew for another one (1) year period (the "***Subsequent Term***"). At the end of any Subsequent Term, the Agreement shall continue to automatically renew for an additional one year period, unless terminated as set forth in Section 6 herein.
- C. **Governance.** The Agreement shall be managed, and the duties under this Agreement performed, by the respective chief administrative officers of each Party, or their respective duly authorized representatives or designees ("***Party Representative***"). Each Party Representative shall operate and act with respect to Agreement affairs and actions only pursuant to action duly authorized by the Party Representative's corporate authorities. Buffalo Grove as Official Coordinator of this Agreement is authorized to take such actions as are necessary to effectuate the purpose of this Agreement.

**SECTION 4. GENERAL COOPERATION.**

- A. **Cooperation.** The Parties acknowledge and agree to cooperate with each other in furtherance of the purposes, goals, and objectives of the Agreement. Cooperation required by this Agreement specifically includes, but is not limited to, the sharing and joint utilization by and among the Parties of information and other materials possessed or developed by the Parties, either individually or collectively, and necessary to investigate, identify, and otherwise document the Joint Power Supply Bid.
- B. **Independent Operation.** Notwithstanding the provisions of Section 4.A of this Agreement, the Parties acknowledge and agree that the Parties are operating separate Electric Aggregation Programs for each community pursuant to their own plans of governance, and that the Joint Power Supply Bid does not create any responsibility or obligation for any Party to administer or operate any aspect of the Electric Aggregation Program of any other Party.

**SECTION 5. CONTRACTING PROCESS; PAYMENTS AND EXPENSES.**

- A. **Official Coordinator.** For the Initial Term of this Agreement Arlington Heights, Lincolnshire, Long Grove, Palatine, Vernon Hills and Wheeling shall prepare and submit contract documents and bid specifications for their portions of the Joint Power Supply Bid to Buffalo Grove, who will serve as the Official Coordinator to bid the Joint Power Supply Bid.
- B. **Procedure for Developing Request for Proposals.** At such time as the Parties desire to solicit competitive sealed bids ("***Sealed Bids***") from contractors for the Joint Power Supply Bid, the Parties shall agree to follow the following process:
- i. The Parties shall meet and confer and agree upon a set of technical specifications and requirements ("***Technical Requirements***") and bidding and contract documents ("***Contract Package***") for the Joint Power Supply Bid. The contract documents shall include a contract to be executed by and between the contractor and each Party for the provision of electrical power to that Party pursuant to the Joint Power Supply Bid ("***Power Supply Agreement***").  
  
The Contract Package shall, without limitation, require bidders to submit pricing to supply electric power to all Parties jointly, provided that the bidder's pricing structure must allow a Party or Parties to proceed with the Joint Power Supply Bid at the joint price, or a substantially similar price.
  - ii. All Parties shall have an adequate opportunity to review and comment on the Technical Requirements and Contract Package, and shall provide such comments to the Official Coordinator. Revised drafts of the Technical Requirements and Contract Package shall be prepared and reviewed by the Parties until such time as the Parties have approved these documents.
  - iii. When all Parties are satisfied with the Technical Requirements and Contract Package, the Official Coordinator may issue these documents to prospective

contractors or suppliers to solicit Sealed Bids, and shall establish a deadline for the submission of Sealed Bids.

- iv. During the time following the issuance of the Technical Requirements and Contract Package, and prior to the deadline for submission of Sealed Bids, the Official Coordinator shall issue such addenda to the prospective contractors as may be necessary to respond to the inquiries of such prospective contractors or to clarify the Technical Requirements and Contract Package. The Official Coordinator shall consult with the other Parties prior to issuing any such addenda. The Parties shall refer any inquiries or issues received or identified regarding the Technical Requirements and Contract Package to the Official Coordinator for possible inclusion in such an addendum.
- v. Following receipt of the Sealed Bids, the Official Coordinator shall provide copies of the Sealed Bids to each of the Parties. The Party Representatives shall examine and review the Sealed Bids and shall confer to discuss the Sealed Bids and to recommend to the Parties which contractor shall be selected.
- vi. The village managers or designee of each Party is hereby authorized to accept the lowest and most responsible bid after opening of the Sealed Bids.
- vii. For each Party that is going to move forward with the Power Supply Agreement, the corporate authorities or authorized designee of that Party must approve the award of the Power Supply Agreement.

- C. **Administration by the Parties.** After the completion of the Joint Power Supply Bid and the award by each Party of its own Power Supply Agreement with the contractor, each Party shall be responsible to manage its own Power Supply Agreement and Electric Aggregation Program.
- D. **Expenses.** Except as set forth in Section 5.E. herein, the Parties acknowledge and agree to use their respective staffs and resources, at no cost to the other Parties.
- E. **Costs of this Agreement.** The Parties agree to participate equally in paying for the Electric Aggregation Program which include costs associated with (i) Consultant's costs; (ii) the preparation of solicitation for bids for the Joint Power Supply Bid; (iii) legal services to be provided by Raysa & Zimmermann, LLC which shall not exceed \$7,000.00; and (iv) other actions deemed necessary to effectuate the purpose of this Agreement. Each Party shall receive a detailed invoice identifying the service provided and date of service. Each Party shall remit payment within thirty (30) days of the receipt of an invoice. Each Party shall budget and appropriate sufficient funds to pay its respective share of said costs. A terminating Party shall remain liable and responsible for paying their share of costs incurred prior to termination. If a Party's referendum fails to pass said Party shall remain liable and responsible for paying their share of costs incurred prior to the referendum.

**SECTION 6. WITHDRAWAL; TERMINATION.**

- A. **Right to Withdraw.** Any Party may withdraw from this Agreement prior to going out to bid on the Joint Power Supply Bid in the Initial Term or any Subsequent Term, provided that the withdrawing Party must provide notice in writing to the other Parties of its withdrawal no later than 7 days before issuance of the bid.
- B. **Dissolution and Termination.** This Agreement shall be dissolved and terminated (i) upon the written agreement of all the Parties hereto; or (ii) upon the event of only one Party remaining as a party to this Agreement.

**SECTION 7. GENERAL PROVISIONS.**

- A. **Notices.** All notices and other materials shall be delivered to the Official Coordinator. All notices required to be delivered to any Parties pursuant to this Agreement shall be in writing and shall be deemed delivered to the Party when delivered in person or by express mail or messenger, via facsimile, or three (3) days after deposit thereof in any main or branch United States Post Office, properly addressed to the Party's principal office and to the attention of the Party's chief administrative official. All notices related to the Technical Requirements of the Joint Power Supply Bid may be coordinated by the Official Coordinator and the Party Representatives by electronic mail or other means of communication, as appropriate.

Notices and communications to each Party shall be addressed to, and delivered at, the following addresses:

Arlington Heights:	Village of Arlington Hts. 33 S. Arlington Heights Rd. Arlington Heights, IL 60005 Attn: Village Manager	With a copy to:	Robin Ward Assistant Village Attorney Village of Arlington Heights 33 S. Arlington Heights Road Arlington Heights, IL 60005
Buffalo Grove:	Village of Buffalo Grove 50 Raupp Boulevard Buffalo Grove, IL 60089 Attn: Village Administrator	With a copy to:	William Raysa Raysa & Zimmermann, LLC 22 South Washington Av. Park Ridge, IL 60068
Lincolnshire:	Village of Lincolnshire One Olde Half Day Road Lincolnshire, IL 60069 Attn: Village Manager	With a copy to:	Adam Simon Ancel Glink 175 East Hawthorn Parkway Suite 145 Vernon Hills, IL 60061
Long Grove:	Village of Long Grove 3119 RFD Long Grove, IL 60047 Attn: Village Manager	With a copy to:	Victor P. Filippini, Jr. Holland & Knight 131 S. Dearborn Street, 30th Floor Chicago IL 60603

Palatine:	Village of Palatine 200 East Wood Street Palatine, IL 60067 Attn: Village Manager	With a copy to:	Robert Kenny Schain, Burney, Banks & Kenny, Ltd. Three First National Plaza 70 W. Madison Street, Suite 4500 Chicago, IL 60602
Vernon Hills:	Village of Vernon Hills 290 Evergreen Drive Vernon Hills, IL 60061 Attn: Village Manager	With a copy to:	Robert Kenny Schain, Burney, Banks & Kenny, Ltd. Three First National Plaza 70 W. Madison Street, Suite 4500 Chicago, IL 60602
Wheeling:	Village of Wheeling 2 Community Blvd. Wheeling, IL 60090 Attn: Village Manager	With a copy to:	James Ferolo Klein, Thorpe & Jenkins, Ltd. 20 N. Wacker Drive Suite 1660 Chicago, IL 60606

- B. Entire Agreement.** There are no representations, covenants, promises, or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying in entering into this Agreement. This Agreement, and all covenants and provisions herein contained shall bind and inure to the benefit of each respective local governmental entity which is a party hereto and their respective successors and assigns.
- C. Severability.** If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.
- D. Interpretation.** It is the express intent of the Parties that this Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, the provision that best promotes and reflects the intent of the Parties shall control. The Parties hereto have been represented by counsel and have had full opportunity to discuss this Agreement prior to execution. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting thereof. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- E. Amendments and Modifications.** This Agreement shall not be modified, changed, altered, or amended without the duly authorized and written consent of each of the Parties by their respective corporate authorities and pursuant to ordinances or resolutions duly adopted and approved by the Party's corporate authorities. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved by the corporate authorities of each Party and properly executed in accordance with all applicable law.

- F. **Authority to Execute.** Each Party hereby warrants and represents to each other Party that the person executing this Agreement on its behalf has been properly authorized to do so by the corporate authorities of the Party.
- G. **No Third Party Beneficiaries.** Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.
- H. **Indemnification.** Each Party hereby agrees to indemnify, hold harmless and defend the other Party from and against any and all losses, claims, expenses and damages (including reasonable attorneys' fees) made against or incurred by the other Party for any actions taken or failures to act by the Party in connection with the Joint Power Supply Bid that arise out of the Joint Power Supply Bid, each Party's Power Supply Agreement, each Party's Electric Aggregation Program, Power Supply Agreement, or this Agreement, to the extent that such claims were not caused by actions, or failures to act, of another Party.
- I. **Execution.** This Agreement shall be executed by all of the Parties in identical original duplicates and each of the duplicates shall, individually and taken together, constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have by their duly authorized officers and representatives set their hands and affixed their seals to be effective as of the date specified in Subsection 3A of this Agreement.

**[SIGNATURES FOLLOW ON SUBSEQUENT PAGE]**

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF ARLINGTON HTS.**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF BUFFALO GROVE**

By: \_\_\_\_\_  
Village President

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF LINCOLNSHIRE**

By: \_\_\_\_\_  
Village President

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF LONG GROVE**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF PALATINE**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF VERNON HILLS**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Village Clerk

**VILLAGE OF WHEELING**

By: \_\_\_\_\_  
Mayor