

Item #6:
**Resolution Authorizing Thirty-five (35) Month Agreement
With Constellation**

VILLAGE OF LONG GROVE

RESOLUTION NO. 2014-R-__

**A RESOLUTION AUTHORIZING A THIRTY-FIVE MONTH PROPOSAL
AND RELATED DOCUMENTATION FROM CONSTELLATION FOR ELECTRICITY
UNDER ELECTRICITY AGGREGATION PROGRAM**

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, Buffalo Grove, Lincolnshire, Palatine, Vernon Hills and Wheeling ("**Consortium**") have entered into an Intergovernmental Agreement to pursue an Electricity Aggregation Program (the "**IGA**"); and

WHEREAS, the Consortium has completed a competitive selection process to provide residents and small businesses in the Village with a discount on electricity supply costs when compared to the rates offered by Commonwealth Edison, which selection process has reached an agreement with Integrys Energy Services to supply electricity between June 2013 and May 2014 for approximately 8% less than Commonwealth Edison (the "**Integrys Proposal**"); and

WHEREAS, pursuant to Section 5.B.vi of the IGA approved by the Village Board, the Village Manager has been "authorized to accept the lowest and most responsible bid after opening of the Sealed Bids"; and

WHEREAS, pursuant to Section V.A of the plan of operation and governance (the "**POGO**") that the Village Board has adopted as part of the Village's Electricity Aggregation Program, the Village Manager is further authorized "to accept, accept with conditions, or reject any proposal in accordance with the Intergovernmental Agreement"; and

WHEREAS, the Consortium completed a competitive selection process to provide residents and small businesses in the Village with a discount on electricity supply costs when compared to the rates offered by Commonwealth Edison, which selection process reached an agreement with Constellation Energy Services to supply electricity between June 2014 and May 2017 (the "**Constellation Proposal**"); and

WHEREAS, the President and Board of Trustees of the Village desire to authorize the approval of the Constellation Proposal for the period of June 2014 through May 2017, as more fully described in Exhibit A to this Resolution;

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 TOW: 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, any and all agreements and all necessary documentation related thereto to implement the Constellation Proposal in accordance with the IGA and POGO.

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

PASSED THIS 25TH DAY OF MARCH, 2014.

AYES: Trustees:

NAYS: None

ABSENT: None

APPROVED THIS 25TH DAY OF MARCH, 2014.

Angela Underwood, Village President

ATTEST:

Heidi Locker-Scheer, Village Clerk

EXHIBIT A
Constellation Proposal

[date]

Aggregation Program Agreement

Between

Village of _____ and _____

This Aggregation Program Agreement, is entered into as of this _____ day of _____, 2014 ("Agreement"), by and between the Village of _____ ("Village"), a political subdivision of the State of Illinois, and _____ ("Vendor"). Vendor and the Village are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

WITNESSETH

WHEREAS, pursuant to 20 ILCS 3855/1-92, the Village desires to aggregate the residential and small commercial retail electrical loads located within its jurisdictional boundaries and arrange for competitive retail electric supply for these electrical accounts (the "Aggregation"); and

WHEREAS, the Village approved an Intergovernmental 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 ("Consortium") concerning Electric Aggregation pursuant to Resolution No. 2012-03; and

WHEREAS, the Village issued a Request for Proposal for Municipal Aggregation of Electric Supply for Residential and Small Commercial Retail Customers and has approved a Plan of Operation and Governance as part of its electric aggregation program; and

WHEREAS, the Village has selected Vendor as the supplier for the Aggregation; and

WHEREAS, the Parties desire to establish the rights and obligations of the Parties with respect to aggregating, determining a price and supplying the Aggregation (the "Program").

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

DEFINITIONS

1. "**Aggregate**" means the total number of Eligible Customers that are within the jurisdictional boundaries of the Village.
2. "**Aggregation Statute**" means Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-1, et seq.
3. "**ARES**" see definition, Retail Electric Supplier or RES.
4. "**Billing Services**" means those services describe in Article 4 of this Agreement.
5. "**Buyer**" means a residential or small commercial retail customer who participates in this Program as permitted by the law.

6. "**ComEd**" means Commonwealth Edison.
7. "**Compliance Services**" means those services identified in Section 4.15 of this Agreement.
8. "**Confidential Information**" is defined in Article 9 of this Agreement.
9. "**Consortium**" means 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.
10. "**Customer Information**" means that certain information that the Electric Utility is required to provide to the corporate authorities of the Village pursuant to the Aggregation Statute, including without limitation those names and addresses and Electric Utility account numbers of residential and small commercial retail customers in the Aggregate area that are reflected in the Electric Utility's records at the time of the request.
11. "**Data**" is defined in Article 9 of this Agreement.
12. "**Delivery Period**" the date in which electricity supply is provided to residential and small commercial electricity customers who are Participating Customers as set forth within Exhibit C, Pricing Confirmation.
13. "**Electric Utility**" means ComEd.
14. "**Eligible Customers**" means residential and small commercial electricity customers within the Village who are eligible to participate in the Program pursuant to the Aggregation Statute and the Requirements of Law.
15. "**Energy**" means generated electricity.
16. "**Enrollment Services**" means those services described in Article 4 of this Agreement.
17. "**Extended Term**" is defined in Article 1 of this Agreement.
18. "**Force Majeure Event**" is defined in Article 5.
19. "**Full-Requirements Electricity Supply**" means all services or charges necessary to provide the continuous supply of electricity to all Participating Customers, including, without limitation, Energy, capacity, losses, Renewable Portfolio Standard (RPS) charges, imbalances, load factor adjustments, transmission costs, congestion charges, marginal losses, ancillary services, taxes applicable only to the Vendor, and any additional necessary services or charges, other than those services and charges to be supplied by the Electric Utility.
20. "**Full-Requirements Electricity Supply Services**" means those portions of the Services described in Article 2 and Article 4 of this Agreement.
21. "**ICC**" means the Illinois Commerce Commission.
22. "**Independent System Operator**" or "**ISO**" means that certain independent system operator for the Electric Utility established pursuant to Section 16-126 of the Public Utilities Act, 220 ILCS 5/16-126.
23. "**Intergovernmental Agreement**" means that certain intergovernmental agreement by, between, and among the Consortium.

24. "**Joint Power Supply Bid**" means the Request for Proposal for Municipal Aggregation of Electric Supply for Residential and Small Commercial Retail Customers to identify the Vendor.
25. "**New Customers**" are defined in Section 4.9 of this Agreement.
26. "**Opt-Out Notice**" means the notices described in Section 4.10.1 of this Agreement and provided to Eligible Customers informing them of their ability to opt-out of the Program pursuant to the Requirements of Law.
27. "**Opt-Out Period**" means the time prior to the implementation of the Program during which Eligible Customers may choose not to participate in the Program pursuant to the Requirements of Law.
28. "**Opt-Out Process**" is defined in Section 4.10 of this Agreement.
29. "**Participating Customers**" means those Eligible Customers who do not opt out of the Program and are not Special Billing Customers, and New Customers.
30. "**Plan of Operation and Governance**" or "**POGO**" means that certain Plan of Operation and Governance approved by the Village on April 16, 2012, as amended, pursuant to the Aggregation Statute and attached hereto as Exhibit D.
31. "**Point of Delivery**" means the point specified by the Electric Utility at which the Vendor must deliver the Full-Requirements Electricity Supply to the Electric Utility for distribution to Participating Customers.
32. "**Price**" means the fixed price expressed in cents per kilowatt hour at which the Vendor will provide the Services as set forth in Exhibit C to this Agreement.
33. "**Program**" means the electricity aggregation program operated by the Village in accordance with the Aggregation Statute and authorized by the Aggregation Ordinance, to aggregate residential and small commercial retail electrical loads located within the corporate limits of the Village for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Full-Requirements Electricity Supply and related Services.
34. "**Proposal Response**" means the response submitted by the Vendor to the Request for Proposal for Municipal Aggregation of Electric Supply for Residential and Small Commercial Retail Customers issued on behalf of the Consortium, attached hereto as Exhibit A.
35. "**Requirements of Law**" means the Aggregation Ordinance, the Aggregation Statute, the Plan of Governance, the Intergovernmental Agreement, the rules and regulations of the ICC, the rules, regulations and tariffs applicable to the Electric Utility and the Independent System Operator, and all other applicable federal, state, and local laws, orders, rules, and regulations.
36. "**Retail Electric Supplier**" or "**RES**" means an Alternative Retail Electric Supplier ("ARES") as that term is defined in Section 16-102 of the Public Utilities Act, 220 ILCS 5/16-102.
37. "**Services**" means the Full-Requirements Electricity Supply Services, Program Implementation Services, Enrollment Services, Billing Services, and Compliance Services provided for in this Agreement.
38. "**Special Billing Customers**" are defined in Section 4.8 of this Agreement.

39. "**Tariffed Service**" means the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 at the rates established in ComEd's "Price to Compare" for the applicable rate class, as posted on the ICC website, which includes ComEd's electricity supply charge plus ComEd's transmission series charge, but does not include ComEd's purchased electricity adjustment.
40. "**Term**" is defined in Article 1 of this Agreement.
41. "**Vendor**" means Constellation NewEnergy, Inc., and the lawful successor, transferee, designee, or assignee thereof.
42. "**Village**" means the Village of _____.

ARTICLE 1: TERM

- 1.1 **Term of Agreement.** This Agreement commences upon execution by the Parties and is for a term of thirty-six (36) consecutive monthly billing periods starting from the initial meter read date designated by the Village in consultation with the Vendor in May 2014, and expires at the end of the last day of the 36th billing cycle for the Participating Customer(s) with the latest billing cycle ("**Term**"). The Village and the Vendor may extend the Term for up to two additional periods not to exceed a total of twenty-four months, by written agreement approved and executed by each Party (each an "**Extended Term**"), provided that pricing terms must be established at least 60 days prior to the beginning of the new Delivery Period (Extended Term) to allow sufficient time for applicable notices. Nothing in this Article related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by the Village to the Vendor will continue beyond the Term or an approved Extended Term. In the event the Village decides either (a) the Aggregation Program will terminate upon expiration the current Delivery Period, or (b) that it would like to renew the Program, but with a supplier other than Vendor, then the Village must provide notice to Vendor at least 45 days prior to the first expiration date with any Aggregation Member.

ARTICLE 2: VENDOR'S PERFORMANCE

- 2.1 **Aggregation Duties.** Vendor will:
- 2.1.1 Provide draft informational materials, including an introductory letter, Opt-Out notice or first solicitation letter, and welcome letter to the Village for review and approval;
- 2.1.2 Establish a toll-free telephone number staffed with customer service representatives to address questions of potential Aggregation participants. The telephone number will be available to Eligible Customers 24 hours a day, seven days a week. Trained Vendor representatives shall be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained Vendor representative on the next business day. Under normal operating conditions, telephone answer

- times by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) thirty seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
- 2.1.3** Establish and maintain a website for the Participating Customers. The website shall provide basic information concerning the Aggregation program and will facilitate customer inquiries by providing a platform for the submission of questions by email or text. Responses to inquiries submitted through the website platform must be generated within 24 hours. A link to the Vendor website may be included on the Village website for information.
 - 2.1.4** Assist the Village with its request for the generic electrical load profiles for each delivery class that will be included in the Aggregation (pursuant to Commonwealth Edison's tariff, Rate GAP).
 - 2.1.5** Mail informational materials and customer terms and conditions to the potential Eligible Customers on documentation which includes the Village logo, which Customer names and addresses are to be transferred to Vendor;
 - 2.1.6** Assist the Village with the requests for the delivery of data from Commonwealth Edison and the completion and filing of the Government Authority Aggregation Form;
 - 2.1.7** Negotiate the Delivery Period(s) and Price(s) to be offered through the Program;
 - 2.1.8** Establish and maintain a database that performs the following functions:
 - 2.1.8.1** Maintains lists of potential participants who elect to Opt-Out of the Aggregation;
 - 2.1.8.2** Maintains lists of Aggregation participants who have either provided consent to join the Aggregation or are automatically participants of the Aggregation as a result of inaction; and,
 - 2.1.8.3** Maintains consumption and account data for Aggregation participants.
 - 2.1.9** Submit the enrollment of the Participating Customers with Commonwealth Edison;
 - 2.1.10** Provide the Village with reports and information reasonably required by the Village, including reports to provide competent and reliable evidence to support its purchase and retirement of Renewable Energy Credits ("RECS") in a sufficient quantity to offset the non-renewable energy provided in the Mix specified in the Price Quote. Vendor will provide quarterly reports showing the number of Aggregation participants, total quantity of energy, and the Price for energy provided to the Program as compared to the Utility default tariff rates.
 - 2.1.11** Implement and maintain services designed to provide Eligible Customers universal access to the Program, including but not limited to customer assistance for multi-lingual Eligible Customers and Eligible Customers with disabilities.
 - 2.1.12** Pay the costs associated with the duties contained in this Article 2.
 - 2.1.13** Schedule electricity to ComEd on behalf of the Aggregation, subject to the terms set forth in Exhibit B.
 - 2.1.14** Perform all other services required by the Village in the POGO attached hereto as Exhibit D.
 - 2.1.15** Take all actions necessary to arrange for the scheduling, transmission, and delivery of Full-Requirements Electricity Supply to the Electric Utility for distribution to all Participating Customers.
 - 2.1.16** Vendor shall schedule the Full-Requirements Electricity Supply for distribution as required by the Electric Utility.

- 2.1.17 Arrange for necessary distribution and transmission rights necessary for the delivery of the Full-Requirements Electricity Supply to the Electric Utility hereunder.
- 2.1.18 Vendor shall cause to be transmitted and delivered to the Electric Utility at the Point of Delivery sufficient Energy to provide continuous Full-Requirements Electricity Supply to all Participating Customers. The Village acknowledges that the Electric Utility, and not the Vendor, is responsible for the distribution of the Full-Requirements Electricity Supply to the Participating Customers after delivery by the Vendor to the Point of Delivery, and that Vendor does not take responsibility for the distribution of the Full-Requirements Electricity Supply to Participating Customers after the Vendor provides Full-Requirements Electricity Supply to the Point of Delivery.
- 2.1.19 Vendor acknowledges and agrees that if the Vendor fails to provide the Full-Requirements Electricity Supply to the Participating Customers pursuant to this Agreement, including without limitation if Vendor fails to schedule all or part of the Full-Requirements Electricity Supply for any Participating Customer, Vendor shall be solely responsible for any additional costs, charges, or fees incurred by Vendor because of such failure, and shall not pass through any such additional costs, charges, or fees to Participating Customers.

ARTICLE 3: VILLAGE'S PERFORMANCE

3.1 Aggregation Duties. The Village will:

- 3.1.1 Submit to Commonwealth Edison a request for the identification of the Eligible Customers located within the boundaries of the Village that are in the delivery class(es) that will be included in the Aggregation and transfer such data to Vendor. This data shall be obtained by the Village pursuant to Rate GAP and will be used by Vendor solely for use with the Program;
- 3.1.2 Negotiate the Delivery Period(s) and Fixed Rate Price(s) to be included in the customer terms and conditions for each Delivery Period and confirm that Price between the Parties;
- 3.1.3 Inform Vendor of any fees or cost recovery the Village seeks to add to the Fixed Rate Price above and beyond prior to the Price being submitted to the Village by the Vendor.
- 3.1.4 Submit to Commonwealth Edison (i) the Government Authority Aggregation Form, (ii) a list of retail customers that have elected to opt-out of the Aggregation (if applicable), and (iii) a list of all retail customers included in the Aggregation;
- 3.1.5 Transfer to Vendor the data (including without limitation account numbers) received from Commonwealth Edison as a result of the submittal noted in 3.1.4. above, which sets forth the participants in the Aggregation.
- 3.1.6 Pay the costs associated with the duties contained in this Section 3.1.
- 3.1.7 Review and approve the informational materials provided by the Vendor, including as applicable an introductory letter, Opt-Out notice or first solicitation, and welcome letter.

ARTICLE 4: TERMS OF SERVICE, PRICE, ADDITIONS AND BILLING

- 4.1 **Terms of Service.** The terms of service between each participant in the Program and Vendor shall be set forth in the contract between them, substantially in the form attached hereto as Exhibit B. The Price for specific Delivery Periods shall be mutually agreed upon by Vendor and the Village in writing on a fully executed Confirmation and included in the final terms of service distributed as set forth in the Opt-Out Plan (which final terms of service shall be referred to as the “Terms and Conditions”).
- 4.2 **Establishing a Price.** To establish a Price, Vendor will submit a Price for a specific Delivery Period to the Village Designee in the form of a confirmation, substantially similar to Exhibit C. The Price for the Delivery Period submitted to the Village in this form is *not* an offer. This submittal will contain market sensitive pricing, which pricing is subject to change until the document is executed by the Village and Vendor. If the Price and Delivery Period submitted to the Village meets with the Village’s approval, then the Village shall promptly execute the document and return it via fax to Vendor. Upon receipt by Vendor, Vendor will verify that the Price for the Delivery Period is still available, and if so, will execute the document thereby creating a fully executed Confirmation, and return the Confirmation by fax to the Village for its records. Only a fully executed Confirmation shall be binding, form a part of this Agreement, and evidence an agreement between Vendor and the Village with respect to the Price for a specific Delivery Period for the Aggregation.
- 4.3 **Market Information.** When discussing pricing alternatives, Vendor may provide information and/or analyses of alternatives available to the Program regarding energy commodities, related transactions for supply, and other energy market information. Vendor shall be deemed to have provided only information, and/or analyses of potential alternatives available to the Aggregation, and the Village shall make all decisions independently. Vendor has not and shall not be deemed to have made or given any representations, warranties, guarantees or assurances as to the actual or perceived outcomes and/or any other effects, adverse or beneficial, relating to this Agreement, the Terms and Conditions, or any Confirmation. Vendor has not acted and shall not be deemed to have acted, in any capacity as an agent or fiduciary for the Village in connection with this Agreement or any Confirmation.
- 4.4 **Adding to the Aggregation after planned Program enrollments.** After the initial enrollment of the Aggregation (or after subsequent planned Program enrollments for a specific Delivery Period and Price agreed upon by Village and Vendor) Vendor may allow other potential participants to enroll with Vendor through various methods, including without limitation direct contact between an individual potential participant and Vendor via telephone or Vendor’ website, and/or en masse through a special offering. Potential participants who enroll with Vendor other than during a planned Program enrollment that corresponds to a specific Delivery Period and Confirmation between the Village and Vendor, may pay a different rate than those who join during a planned Program enrollment.
- 4.5 **Service Inquiries.** Vendor shall establish a toll free telephone number to answer general information requests, billing questions and other customer service inquiries for the Aggregation participants. All emergency or other service disruption concerns should be directed to Commonwealth Edison.
- 4.6 **Cooperation at the Conclusion of the Aggregation.** Vendor agrees that it will cooperate with the Village in the Village’s planning and implementation of an aggregation

plan that may succeed the Program under this Agreement. In its cooperation, Vendor will, at a minimum, do the following in a manner consistent with the then applicable Commonwealth Edison's tariff for Government Aggregation Protocols and law, provide the Village the names and addresses and account information for Aggregation participants in electronic format.

4.7 Subcontractors. Vendor agrees to employ only those subcontractors that are necessary and are approved in advance by the Village. Subcontractors shall be held to the same strict confidentiality standards applicable to the Vendor, and will be required to otherwise comply with the requirements of this Agreement. The use of subcontractors whether approved or unapproved will not relieve the Vendor from the duties, terms and conditions in this Agreement. For purposes of this Agreement, regional transmission organizations, independent system operators, Electric Utilities, and energy or REC suppliers shall not be considered subcontractors.

4.8 Special Billing Customers. Subject to the Requirements of Law and due to the minimal and/or fixed nature of their existing billing rates, the following Eligible Customers shall not be automatically enrolled in the Program, but may elect to enroll in the Program as New Customers pursuant to this Agreement:

4.8.1 Any Eligible Customer in the residential customer class, as described herein that is taking service under the following ComEd rates:

- *Rate BESH – Basic Electric Service Hourly Pricing*
- *Rate RDS – Retail Delivery Service*; and

4.8.2 Any eligible Customer in the commercial customer class, as described herein that is taking service under the following ComEd rates:

- *Rate BESH – Basic Electric Service Hourly Pricing*
- *Rate RDS – Retail Delivery Service.* (collectively, the "**Special Billing Customers**").

4.9 New Customers. After the commencement of the Program and the enrollment of Participating Customers, the Vendor shall, at the request of the Village or of a New Customer, as defined in this Article, expeditiously enroll such New Customer in the Program and provide Full-Requirements Electricity Supply to those customers at the Price. "New Customers" are defined as:

4.9.1 Any Eligible Customer within the Village that moves to a new location within the Village;

4.9.2 Any Eligible Customer that moves into an existing or new facility within the Village;

4.9.3 Any Eligible Customer that previously opted out of the Program during the Opt-Out Period; and

4.9.4 Any Eligible Customer that was inadvertently omitted from the list of Participating Customers and not enrolled in the Program. (collectively, the "**New Customers**):

4.10 Opt-Out. Vendor, at its sole cost and expense, shall, with the assistance of the Village, administer the process by which Eligible Customers are provided with the opportunity to

opt-out of the Program prior to its implementation (the "**Opt-Out Process**"), including, but not limited to, the following:

- 4.10.1 Opt-Out Notices.** Vendor, at its own expense, shall be fully responsible to prepare and mail form Opt-Out Notices to all Eligible Customers as required pursuant to the Requirements of Law. Opt-Out Notices must include all information required pursuant to the Requirements of Law, including without limitation including the terms and conditions of participation in the Program, the cost to the Customer of Full-Requirements Electricity Supply under the Program, the methods by which Customers may opt out of the Program, and the length of the Opt-Out Period. The Opt-Out Notices must prominently include the toll-free telephone number and secure website described herein. The form and content of the Opt-Out Notices must be approved by the Village prior to mailing by the Vendor. In addition to the Opt-Out Notices, the Vendor will provide Participating Customers with terms and conditions for the provision of Full Requirements Electric Supply to those Participating Customers, which terms and conditions shall comply with and accurately reflect all of the requirements of this Agreement and the Requirements of Law and shall be substantially similar to the form attached in Exhibit B.
- 4.11 Billing Services.** The Vendor must supply the following Billing Services as provided in this Section. Vendor shall confirm that billing to Eligible Customers will be provided by ComEd under a consolidated billing format pursuant to "*Rider PORCB – Purchase of Receivables and Consolidated Billing*," and pursuant to the Requirements of Law. The Village acknowledges and agrees that ComEd will bill Participating Customers for the Price of the Full-Requirements Electricity Supply as part of its billing for the distribution of such supply, and that the Vendor shall not be responsible for billing Participating Customers.
- 4.12 Customer Classes.** Eligible Customers shall be categorized within either the residential or commercial customer classes according to the applicable rates under which they received electricity supply from ComEd prior to participating in the Program.
- 4.13 Residential Customer Class.** The residential customer class shall include Participating Customers taking service from ComEd under the following rates:
- 4.13.1 *Residential Single Family Without Electric Space Heat Delivery Class*
 - 4.13.2 *Residential Multi Family Without Electric Space Heat Delivery Class*
 - 4.13.3 *Residential Single Family With Electric Space Heat Delivery Class*
 - 4.13.4 *Residential Multi Family With Electric Space Heat Delivery Class*
- 4.14 Commercial Customer Class.** The commercial customer class shall include those Participating Customers taking service from ComEd consuming less than 15,000 kWh annually under the following rates:
- 4.14.1 *Watt-Hour Delivery Class*
 - 4.14.2 *Small Load Delivery Class*
 - 4.14.3 *Nonresidential Electric Space Heat Delivery Class*
- 4.15 Compliance Services.** The Vendor shall assist the Village in complying with any current or future Requirements of Law concerning the operation of the Program, including without limitation the provision of reports or other information as the Village may reasonably request from time to time.

- 4.16 Early Termination.** Participating Customers may terminate service from the Vendor without penalty if they relocate outside of the Village. Participating Customers who did not Opt-Out of the Program during the Opt-Out Period and who later leave the Program for other reasons may not be assessed an early termination fee .
- 4.17 Enrollment Fee.** For any new Participant that joins the Program after the activation of service by the Vendor for the Village, the Vendor may not charge an enrollment fee only to establish service at a property for which the Vendor had not previously provided service in the preceding 30 days. The Vendor shall not charge any enrollment fee with respect to any property for which the identity of the Participant is changed but at which service is interrupted for a period of less than 30 days.
- 4.18 Switching Fee.** Members changing residency within the Village and Participants previously enrolled with the Vendor will not be assessed early termination or enrollment fees. The Vendor shall continue service at the same rate and under the same terms and conditions for any Participant who relocates within the Village prior to the expiration of the contract term, providing that the Participant notifies the Vendor of his or her desire to do so with 30 days' notice. Moving within the Village may cause the Participant to be served for a brief period of time by ComEd. The Vendor shall have the right to bill the participant for any associated switching fee imposed by ComEd.
- 4.19 Price Guarantee.** Intentionally Deleted.
- 4.20 Supplemental Opt-Out Mailings.** Supplier will conduct supplemental Opt-Out mailings every 9 months (if the term is more than 12 months) to those eligible residential and small commercial retail customers that have moved into the Municipality since the last renewal, offering electric service at the Price. Supplier will be responsible for all costs associated with the mailing, including ComEd charges. Should a 9 month period coincide with the Municipality's renewal, no supplemental mailing will be required.
- 4.21 Opt-In Mailings.** At each renewal of the program, Supplier will conduct an opt-in mailing to those residential and small commercial retail customers that have individually selected an electric supplier other than the Supplier, informing them of the pricing of the aggregation program.

ARTICLE 5: PUBLICITY AND TERMINATION

- 5.1 Press Releases.** The Parties agree to joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld.
- 5.2 Program Endorsement.** The Village and Vendor shall cooperate in disseminating information to all potential Aggregation Program participants concerning the Program and the Village's endorsement of the Program. Information related to pricing and other contractual terms related to participation in the Aggregation Program is subject to review and approval by Vendor and the Village. Similarly, any use of the Village's official seal or logo for any use by the Vendor is subject to review and approval by the Village. Upon mutual agreement of the Parties, the Parties may utilize Village resources for advertising,

promotion and consumer communications of the Village's selection of Vendor as the Village's sole preferred supplier for the Program. The Village warrants that it will not take any action (written, verbal, or otherwise) to advise and/or encourage participants to exit the Program, provided however, nothing in the preceding clause shall prohibit either Party from making factual statements in response to inquiries about Aggregation or the Program.

- 5.3 Default and Termination.** Upon termination for any reason this Aggregation Program Agreement shall be of no further force and effect, except for those obligations that survive termination. The obligations of Vendor and each Aggregation Participant set forth in the Terms and Conditions shall survive termination. Notwithstanding the foregoing, at the Village's discretion, in the event that Vendor materially breaches this Agreement and such default remains uncured after written notice (as described in Section 5.3.1 below), the Vendor shall (i) provide written notice to the Aggregation participants that a default has occurred and the alternatives each participant has for electric supply (including terminating service with Vendor), and (ii) shall take such all actions as necessary to return to ComEd the Aggregation participants who elect such alternative. In the event that Vendor materially breaches the Agreement and the Village deems it appropriate to terminate the Program and return the consenting participants to ComEd, or to any other energy supplier, then (i) Vendor shall not charge the Aggregation participants for administrative fees associated with early termination, and (ii) Vendor shall not be liable to Aggregation participants for any damages or penalties resulting from the termination of the Terms and Conditions with each Aggregation participant pursuant to this Section 5.3, including claims related to the price received from ComEd or an alternate supplier being higher than the Price determined herein. If no early termination has occurred, this Agreement shall terminate as set forth in Article 1.

This Agreement may be terminated early in the following circumstances:

- 5.3.1 Non-Compliance.** If either Party fails to comply with any material term or condition of this Agreement, provided the failure continues without a cure thirty (30) days after written Notice of such failure is provided by one Party to the other. Material terms and conditions include but are not limited to:
- 5.3.1.1** A breach of the confidentiality provision;
 - 5.3.1.2** Vendor's disqualification as an ARES due to a lapse or revocation of any required license or certification required to perform the obligations set forth herein; or
 - 5.3.1.3** Any act or omission that constitutes a deception by affirmative statement or practice, or by omission, fraud misrepresentation or a bad faith practice, such as attempting to collect a charge other than the approved per kWh rates or other charges set forth in this Agreement or the Terms and Conditions with each Aggregation participant.
- 5.3.2 Regulatory Event.** Upon the occurrence of a Regulatory Event, as provided for in Section 5.4, in which case the Parties will certify to each other in writing that the Contract is terminated.
- 5.3.3 Failure to Schedule and Deliver.** The failure of Vendor to schedule electricity supply to ComEd for the Aggregation participants, except as permitted under Force Majeure Events as defined in Section 5.5.

- 5.4 Regulatory Event.** The following will constitute a "Regulatory Event":

5.4.1 Illegality. It becomes unlawful for a Party to perform any obligation under this Agreement due to the adoption of, change in, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.

5.4.2 Adverse Government Action. A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially and adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determines to be unreasonable or (C) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure.

Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties will enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to the Agreement, within the prescribed time after entering into negotiations, the adversely affected Party shall have the right, upon ten (10) days prior written notice, to terminate this Agreement in addition to any other remedies available at law or in equity.

5.5 Force Majeure Events. The Vendor shall not be held in default under, or in noncompliance with, the provisions of the Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Program), where such noncompliance or alleged defaults occurred or were caused by a "Force Majeure Event," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, or other event that is reasonably beyond the Vendor's ability to anticipate or control. Non-compliance or default attributable to a Force Majeure Event shall be corrected within a reasonable amount of time after the Force Majeure Event has ceased.

ARTICLE 6: DISCLAIMER AND LIMITATION OF LIABILITY

6.1 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR MAKES NO WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.2 Limitation of Liability. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS CONTRACT FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

6.3 Indemnification by Vendor. SUBJECT TO SECTIONS 6.1 AND 6.2 ABOVE, THE VENDOR SHALL DEFEND AND HOLD HARMLESS, THE VILLAGE, ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ALL THIRD PARTY SUITS, CLAIMS, LOSS, COST, DAMAGE, EXPENSE OR LIABILITY THAT MAY ARISE OUT OF BREACH BY VENDOR IN THE PERFORMANCE OF THIS AGREEMENT.

ARTICLE 7: MISCELLANEOUS

7.1 Entire Agreement. This Agreement including all Exhibits, including but not by way of limitation fully executed Confirmation, attached hereto as Exhibit C, and fully executed amendments, constitute the entire Agreement and understanding between the Parties with respect to the services, which are included herein. All prior written and verbal agreements and representations with respect to these services are merged into and superseded by this agreement.

7.2 Amendment. All amendments or modifications to this Agreement must be made in writing and signed by both Parties before they become effective.

7.3 Non-Assignment. This Agreement shall not be transferred or assigned by either Party without the express authorization of the other Party, which shall not be unreasonably withheld, provided however, with notice to the Village, Vendor may assign this Agreement to an affiliate, provided that Vendor remains liable for Vendor' obligations hereunder.

7.4 Method of Notification. Any notices, requests or demands regarding the services provided under this Agreement shall be properly given or made upon receipt, if delivered by overnight or next day mailing/courier service to the address shown below. If delivered by facsimile, any such document shall be considered delivered on the business day the facsimile is sent, provided the sender has evidence of a successful transmission on that day, and provided further that the successful transmission occurred prior to 5:00 pm eastern prevailing time. If the facsimile is successfully transmitted after 5:00 pm eastern prevailing time, then the notice shall be deemed received on the next business day. Each Party shall direct notices, requests or demands to the other Party using the following address:

Notices to Vendor:

Notices to Village

Notices to Vendor:

Notices to Village:

7.5 Waivers. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

- 7.6 **Applicable Law and Choice of Venue.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, without regard to principles of conflict of laws and venue shall be in Cook County.
- 7.7 **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.
- 7.8 **Controlling Provisions.** As between a Program participant and Vendor, in the event of any inconsistency between the text of this Agreement and the Terms and Conditions, the Terms and Conditions shall prevail. As between Vendor and Village, in the event of any inconsistency between this Agreement and any Exhibit, the terms of this Agreement shall prevail.

ARTICLE 8: REPRESENTATIONS AND WARRANTIES

- 8.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party, as of the date of this Agreement, that:
- 8.1.1 It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
 - 8.1.2 It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
 - 8.1.3 The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - 8.1.4 It has reviewed and understands this Agreement.
 - 8.1.5 It will comply with all federal, state, and local laws, regulations, licensing, and disclosure requirements.
 - 8.1.6 It will maintain the confidentiality of Aggregation members' account information, as required by 815 ILCS 505/2HH.
 - 8.1.7 It will not impose any conditions, terms, fees, or charges on any Participating Customer served by the Program unless the particular term, condition, fee, or charge is clearly disclosed to the Participating Customer during the Opt-Out period and which is set forth in Exhibit B, Terms and Conditions. The Parties recognize there may be pass-through charges in accordance with Exhibit B, Section 5.
- 8.2 **Additional Representations by the Village.** The Village hereby further represents to Vendor, as of the date of this Agreement, that:
- 8.2.1 The Village's execution and delivery of this Agreement, and its performance of its obligations hereunder, are in furtherance, and not in violation, of the municipal purposes for which the Village is organized pursuant to its authorizing statutes and regulations;

- 8.2.2 This Agreement does not constitute any kind of investment by the Village that is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which the Village (or any of its officials in their respective capacities as such) or its property is subject;
 - 8.2.3 The Village has all regulatory authorizations necessary for it to legally perform its obligations under the Agreement and no consents of any other party and no act of any other governmental authority is required in connection with the execution, delivery and performance of the Agreement;
 - 8.2.4 With respect to the Agreement, all acts necessary to the valid execution, delivery and performance of the Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or will be taken and performed as required under all relevant federal, state and local laws, ordinances or other regulations with which Village is obligated to comply. The Village Designee is duly authorized to execute Confirmations on behalf of the Village with respect to the Aggregation;
 - 8.2.5 The Village is capable of assessing the merits and understanding the terms, conditions and risks of each energy, energy services, and/or related contracts that it enters into or chooses not to enter into, and prior to deciding whether to enter into any such arrangement and/or agreement, and in making such decision, the Village independently assesses the merits of such decision, and understands the terms, conditions and risks of such arrangement and/or agreement.
- 8.3 **Additional Representations by the Vendor.** The Vendor hereby further represents to Village, as of the date of this Agreement, that:
- 8.3.1 Vendor will hold any and all subcontractors to the Confidentiality provision set forth below.
 - 8.3.2 Vendor shall not compensate the Village's selected consultant with respect to the award of this Agreement or the performance of this Agreement, except as directed by the Village in writing.
 - 8.3.3 Vendor will obtain and maintain, for the duration of the Aggregation Program Agreement, such proof of insurance and performance security as the Village deem necessary as set forth in Exhibit E attached hereto.
 - 8.3.4 Vendor warrants to Participating Customers and Village that Vendor has good marketable title to all electricity sold hereunder and that said electricity is free from all liens and adverse claims. Title to and risk of loss for the electricity sold hereunder shall pass to Participating Customers upon delivery at such Point(s) of Delivery
 - 8.3.5 Vendor will deliver or cause to be delivered all electricity supplied by Vendor to Aggregation Participants to the Point(s) of Delivery.

ARTICLE 9: CONFIDENTIALITY

- 9.1 **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 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 unrelated to the calculation of the Price or rates pursuant to the Requirements of Law, 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 Village with the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. ("**Illinois FOIA**"), including compliance with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois FOIA, or with a decision or order of a court with jurisdiction over the Village, shall not be a violation of this Section.

- 9.2 **Ownership of Data and Documents.** All data and information, regardless of its format, developed or obtained under this Agreement ("**Data**"), other than the Vendor's confidential information, will be and remain the sole property of the Village. The Vendor must promptly deliver all Data to the Village at the Village's request. The Vendor is responsible for the care and protection of the Data until that delivery. The Vendor may retain one copy of the Data for the Vendor's records subject to the Vendor's continued compliance with the provisions of this Agreement.
- 9.3 **Limitations on Customer Information.** Both Parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH.

IN WITNESS WHEREOF, the Parties have duly executed this agreement to be effective on the date first written above. The Parties agree that signatures transmitted by facsimile are acceptable and binding for execution of this Aggregation Program Agreement.

Signed: _____

Village of _____
Signed: _____

_____, Village Manager

Date: _____

Date: _____

Exhibit A – PROPOSAL RESPONSE

Exhibit B: VILLAGE OF _____ MEMBER TERMS AND CONDITIONS

**Exhibit C: VILLAGE OF _____ MUNICIPAL AGGREGATION
SUPPLY PRICING CONFIRMATION**

Exhibit D: Plan of Operation and Governance

Exhibit E. Insurance Coverage

- A. Worker's Compensation and Employer's Liability with limits not less than:
(1) Worker's Compensation: Statutory;
(2) Employer's Liability:
 \$1,000,000 injury-per occurrence
 \$1,000,000 disease-per employee
 \$1,000,000 disease-policy limit
Such insurance shall evidence that coverage applies in the State of Illinois.
- B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.
- All employees shall be included as insureds.
- C. Comprehensive General Liability
a. with coverage written on an "claims made" basis with limits no less than:
\$1,000,000 Bodily Injury and Property Damage Combined Single Limit
Coverage is to be written on an "occurrence" bases.
- Coverages shall include:
- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
- b. with coverage written on a "claims made" basis with limits no less than:
\$1,000,000 Bodily Injury and Property Damage Combined Single Limit
Coverage is to be written on an "claims made" bases.
- Coverages shall include:
- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
- D. Professional Liability Insurance. Intentionally Deleted.
- E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- F. Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:

Worker's Compensation
Professional Liability
- Each such additional Insured endorsement shall identify Owner as follows: Village of _____, including its Board members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives.