

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MAY 4, 2010 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Purchase of Electric Utility Service	✓ Resolution Ordinance Motion Discussion Only	Judy Buttny Finance Director

SYNOPSIS

A Resolution has been prepared authorizing the execution a revised agreement for the purchase of Electric Utility Service effective May 10, 2010 from Champion Energy Services for a period of three years.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals identified *Steward of Financial Sustainability*.

FISCAL IMPACT

Current electric rates are \$0.08053 per kilowatt hour (kwh). At the time the contract is executed, the new rate will be set. The rate under the new contract will be approximately \$0.05750 per kwh. Based on this estimate, the new contract should save the Village approximately \$30,000 per year compared to the current price.

RECOMMENDATION

Approval on the May 4, 2010 consent agenda.

BACKGROUND

On April 20, 2010 the Village Council approved a Resolution for a contract to purchase electricity from Champion Energy Services. Prior to Village Council review and approval, Champion Energy Services verbally agreed to the contract terms and conditions. Based on this confirmation by Champion, staff placed the contract on a Council meeting agenda for consideration and approval. After Village Council approval of the contract, staff sent the contract to Champion for execution. Champion then indicated that it could not agree to two of the contract terms: termination and indemnification. Champion indicated that it desired indemnification for itself due to the fact that Village employees frequently do work on the facilities to which Champion provides electricity and they did not want to be held liable for any injuries resulting from this. New language provides mutual indemnification instead of indemnification only for the Village. Because Champion is providing electricity and has no control over any of the facilities, this request seemed reasonable. In addition, Champion refused to agree to the Village's standard termination language allowing the Village to terminate at any time with no penalty. Staff and Champion worked out mutually agreeable language concerning termination. New termination language provides that either party can terminate the agreement in the event of a default. If the Village terminates the agreement, it is required to pay any invoices for current or past due amounts plus a penalty (the difference between the contract price minus the market price multiplied by the remaining usage under the Agreement). The penalty would come into play only if the Village would switch suppliers to find a lower rate during the term of the Agreement. It should be noted that the Agreement with Champion is a blend and extend contract whereby the Village could potentially take advantage of lower rates in the future by extending the contract term at a blended rate.

The Village of Downers Grove currently has a franchise agreement with Commonwealth Edison (ComEd), where all Village facilities that are non-revenue generating receive electricity free of charge. In return, ComEd has the ability to use the Village's rights-of-way. The Village pays for electricity in the revenue generating facilities, including the parking deck, water pumping stations, train station and rental properties. For these facilities, ComEd is no longer interested in selling electricity on a retail basis.

An RFP was sent out for a Retail Electric Supplier for revenue generating facilities. The Village received responses from Integrys Energy and Champion Energy. Integrys Energy did not meet the requirements of the Village's RFP. The rate as of April 9, 2010 as quoted by Champion is .05585 per kwh. The actual rate will not be locked in until the contract is signed. This rate will be locked in for a three year contract. A three year contract is recommended to take advantage of historically low pricing in the energy market.

ATTACHMENTS

Resolution

Contract and addendum

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A REVISED
AGREEMENT AND ADDENDUM THERETO BETWEEN
THE VILLAGE OF DOWNERS GROVE
AND CHAMPION ENERGY, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Buyer”) and Champion Energy, LLC (“Champion”), for the receipt of electric power, as set forth in the form of the Agreement and Addendum A submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement and Addendum A, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement and Addendum A.

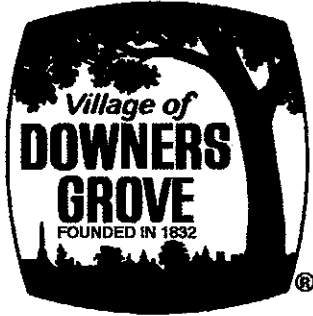
4. That Resolution 2010-36, adopted on April 20, 2010, entitled “A Resolution Authorizing Execution of an Agreement and Addendum Thereto Between The Village of Downers Grove and Champion Energy, LLC” is hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk



REQUEST FOR PROPOSAL

Name of Proposing Company: CHAMPION ENERGY SERVICES

Project Name: RETAIL ELECTRIC SUPPLIER
Proposal No.: 002-009
Proposal Due: November 30, 2009, 2:00 p.m.
Pre-Proposal Conference: None

Required of All Proposers:

Deposit: No
Letter of Capability of Acquiring Performance Bond: No

Required of Awarded Contractor:

Performance Bond/Letter of Credit: No
Certificate of Insurance: Yes

Legal Advertisement Published: November 5, 2009
Date Issued: November 5, 2009
This document consists of 38 pages.

Return **original and two duplicate copies** of proposal in a **sealed envelope** marked with the Proposal Number as noted above to:

THERESA H. TARKA
PURCHASING ASSISTANT
VILLAGE OF DOWNERS GROVE
801 BURLINGTON AVENUE
DOWNERS GROVE, IL 60515
PHONE: 630/434-5530
FAX: 630/434-5571
www.downers.us

The VILLAGE OF DOWNERS GROVE will receive proposals Monday thru Friday, 8:00 A.M. to 5:00 P.M. at the Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515.

SPECIFICATIONS MUST BE MET AT THE TIME THE PROPOSAL IS DUE.

The Village Council reserves the right to accept or reject any and all proposals, to waive technicalities and to accept or reject any item of any proposal.

The documents constituting component parts of this contract are the following:

- I. REQUEST FOR PROPOSALS
- II. TERMS & CONDITIONS
- III. DETAILED SPECIFICATIONS
- IV. PROPOSAL/CONTRACT FORM

DO NOT DETACH ANY PORTION OF THIS DOCUMENT. INVALIDATION COULD RESULT. Proposers MUST submit an original, and 2 additional paper copies of the total proposal. Upon formal award of the proposal, the successful Proposer will receive a copy of the executed contract.

I. REQUEST FOR PROPOSALS

1. GENERAL

- 1.1 Notice is hereby given that Village of Downers Grove will receive sealed proposals up to **November 30, 2009, 2:00 p.m.**
- 1.2 Proposals must be received at the Village of Downers Grove by the time and date specified. Proposals received after the specified time and date will not be accepted and will be returned unopened to the Proposer.
- 1.3 Proposal forms shall be sent to the Village of Downers Grove, ATTN: Theresa Tarka, in a sealed envelope marked "SEALED PROPOSAL". The envelope shall be marked with the name of the project, date, and time set for receipt of proposals.
- 1.4 All proposals must be submitted on the forms supplied by the Village and signed by a proper official of the company submitting proposal. Telephone, email and fax proposals will not be accepted.
- 1.5 By submitting this proposal, the proposer certifies under penalty of perjury that they have not acted in collusion with any other proposer or potential Proposer.

2. PREPARATION OF PROPOSAL

- 2.1 It is the responsibility of the proposer to carefully examine the specifications and proposal documents and to be familiar with all of the requirements, stipulations, provisions, and conditions surrounding the proposed services.
- 2.2 No oral or telephone interpretations of specifications shall be binding upon the Village. All requests for interpretations or clarifications shall be made in writing and received by the Village at least five (5) business days prior to the date set for receipt of proposals. All changes or interpretations of the specifications shall be made by the Village in a written addendum to our proposer's of record.
- 2.3 In case of error in the extension of prices in the proposal, the hourly rate or unit price will govern. In case of discrepancy in the price between the written and numerical amounts, the written amount will govern.
- 2.4 All costs incurred in the preparation, submission, and/or presentation of any proposal including any proposer's travel or personal expenses shall be the sole responsibility of the proposer and will not be reimbursed by the Village.
- 2.5 The proposer hereby affirms and states that the prices quoted herein constitute the total cost to the Village for all work involved in the respective items and that this cost also includes all insurance, royalties, transportation charges, use of all tools and equipment, superintendence, overhead expense, all profits and all other work, services and conditions necessarily involved in the work to be done and materials to be furnished in accordance

with the requirements of the Contract Documents considered severally and collectively.

3. PRE- PROPOSAL CONFERENCE

3.1 A pre-proposal conference may be offered to provide additional information, inspection or review of current facilities or equipment, and to provide an open forum for questions from proposers. This pre-proposal conference is not mandatory (unless stated "Required" on the cover of this document), but attendance by proposers is strongly advised as this will be the last opportunity to ask questions concerning the proposal.

3.2 For those unable to attend the meeting, questions may be posed in writing to the Village (faxed and emailed questions are acceptable), but must be received by the Village prior to the scheduled time for the pre-proposal conference. Questions received will be considered at the conference. An addendum may be issued as a result of the pre-proposal conference. Such an addendum is subject to the provisions for issuance of an addendum as set forth in the section titled "Addenda".

4. MODIFICATION OR WITHDRAWAL OF PROPOSALS

4.1 A Proposal that is in the possession of the Village may be altered by a letter bearing the signature or name of person authorized for submitting a proposal, provided that it is received prior to the time and date set for the bid opening. Telephone, email or verbal alterations of a proposal will not be accepted.

4.2 A Proposal that is in the possession of the Village may be withdrawn by the proposer, up to the time set for the proposal opening, by a letter bearing the signature or name of person authorized for submitting proposals. Proposals may not be withdrawn after the proposal opening and shall remain valid for a period of ninety (90) days from the date set for the proposal opening, unless otherwise specified.

5. SECURITY FOR PERFORMANCE

5.1 The awarded contractor, within thirteen (13) calendar days after acceptance of the proposer's proposal by the Village, shall furnish security for performance acceptable to the Village when required under the documents. Such security shall be either a satisfactory performance bond (bonding company must be licensed to do business in Illinois) or a letter of credit on the form provided by the Village and available from the Village's Purchasing Manager. Any bond shall include a provision as will guarantee faithful performance of the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq. **NOTE: As evidence of capability to provide such security for performance, each proposer shall submit with the proposal either a letter executed by its surety company indicating the proposer's performance bonding capability, or a letter from a bank or savings and loan within twenty-five miles of the corporate boundaries of the Village indicating its willingness and intent to provide a letter of credit for the proposer.**

6. DELIVERY

6.1 All proposal prices are to be quoted, delivered F.O.B. Village of Downers Grove, 801 Burlington, Downers Grove, IL 60515.

7. TAX EXEMPTION

7.1 The Village is exempt from Illinois sales or use tax for direct purchases of materials and supplies. A copy of the Illinois Sales Tax Exemption Form will be issued upon request. Our federal identification will also be provided to selected vendor.

8. RESERVED RIGHTS

8.1 The Village of Downers Grove reserves the exclusive right to waive sections, technicalities, irregularities and informalities and to accept or reject any and all proposals and to disapprove of any and all subcontractors as may be in the best interest of the Village. Time and date requirements for receipt of proposal will not be waived.

II. TERMS AND CONDITIONS

9. VILLAGE ORDINANCES

9.1 The successful proposer will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

10. USE OF VILLAGE'S NAME

10.1 The proposer is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

11. SPECIAL HANDLING

11.1 Prior to delivery of any product which is caustic, corrosive, flammable or dangerous to handle, the Proposer will provide written directions as to methods of handling such products, as well as the antidote or neutralizing material required for its first aid before delivery. Proposer shall also notify the Village and provide material safety data sheets for all substances used in connection with this contract which are defined as toxic under the Illinois Toxic Substances Disclosure to Employees Act.

12. INDEMNITY AND HOLD HARMLESS AGREEMENT

12.1 ~~To the fullest extent permitted by law, the Proposer shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Proposer, its employees, or its subcontractors, and the Proposer, its employees, or its subcontractors, and the Proposer shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, the Proposer shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring the Proposer to indemnify the Village for its own negligence. The Proposer shall indemnify, keep and save harmless the Village only where a loss was caused by the negligent, willful or reckless acts or omissions of the Proposer, its employees, or its Subcontractors.~~

[Handwritten signature]

13. NONDISCRIMINATION

13.1 Proposer shall, as a party to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) By submission of this proposal, the Proposer certifies that he is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this proposal.

13.2 It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Proposer shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 et. seq., and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

14. SEXUAL HARASSMENT POLICY

14.1 The proposer, as a party to a public contract, shall have a written sexual harassment policy that:

- 14.1.1 Notes the illegality of sexual harassment;
- 14.1.2 Sets forth the State law definition of sexual harassment;
- 14.1.3 Describes sexual harassment utilizing examples;
- 14.1.4 Describes the Proposer's internal complaint process including penalties;
- 14.1.5 Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and
- 14.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

15. EQUAL EMPLOYMENT OPPORTUNITY

15.1 In the event of the Proposer's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Proposer may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the

performance of this contract, the Proposer agrees as follows:

- 15.1.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, sexual orientation, sexual identity or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 15.1.2 That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 15.1.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military services.
- 15.1.4 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Proposer's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Proposer in its efforts to comply with such Act and Rules and Regulations, the Proposer will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 15.1.5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 15.1.6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 15.1.7 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are

undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Proposer will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Proposer will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

16. DRUG FREE WORK PLACE

Proposer, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

- 16.1 Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or proposer's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- 16.2 Establishing a drug free awareness program to inform employee's about: (1) the dangers of drug abuse in the workplace; (2) the Village's or proposer's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
- 16.3 Providing a copy of the statement required above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- 16.4 Notifying the contracting or granting agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction from an employee or otherwise receiving actual notice of such conviction.
- 16.5 Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.
- 16.6 Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.

16.7 Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

17. SUBSTANCE ABUSE PREVENTION ON PUBLIC WORKS PROJECTS ACT

17.1 In the event this is a public works project as defined under the Prevailing Wage Act, 820 ILCS 130/2, Proposer agrees to comply with the Substance Abuse Prevention on Public Works Projects Act , 820 ILCS 265/1 *et seq* ,and further agrees that all of its subcontractors shall comply with such Act.. As required by the Act, Proposer agrees that it will file with the Village prior to commencing work its written substance abuse prevention program and/or that of its subcontractor(s) which meet or exceed the requirements of the Act.

18. PREVAILING WAGE ACT

18.1 Proposer agrees to comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1 *et seq.*, for all work completed under this contract. Proposer agrees to pay the prevailing wage and require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform work pursuant to this contract or related subcontract. For applicable rates, go to the State of Illinois – Department of Labor website and use the most current DuPage County rate.

18.2 Proposer and each subcontractor shall keep or cause to be kept an accurate record of names, occupations and actual wages paid to each laborer, workman and mechanic employed by the Proposer in connection with the contract. This record shall be open to inspection at all reasonable hours by any representative of the Village or the Illinois Department of labor and must be preserved for four (4) years following completion of the contract.

18.3 In the event this is a contract for a public works project, as defined in 820 ILCS 130/2, Proposer agrees to post at the job site in an easily accessible place, the prevailing wages for each craft or type of worker or mechanic needed to execute the contract or work to be performed.

18.4 In the event this is a public works project as defined under the Prevailing Wage Act, 820 ILCS 130/2, any and all contractors and subcontractors must submit certified payroll records to the Village on a monthly basis. **WITHOUT THIS PAPERWORK, NO INVOICE SHALL BE PAID BY THE VILLAGE.** Contractors and subcontractors must also submit a statement affirming that the records are true and accurate, that the wages paid to each worker are not less than the prevailing rate, and that the contractor and subcontractor are aware that filing false records is a Class B misdemeanor. The records must include the name, address, telephone number, social security number, job classification, hours of work, hourly rate, and start and end time of work each day for every worker employed on the public work. The Village reserves the right to check the pay stubs of the workers on the job. The Village further cautions that payment for any services rendered pursuant to this contract may be predicated upon receipt of said records.

18.5 In the event that this is a construction project where Motor Fuel tax monies or state grant monies are used in the construction, maintenance and extension of municipal streets, traffic control signals, street lighting systems, storm sewers, pedestrian subways or overhead crossings, sidewalks and off-street parking facilities, and the like, the Village will require an Apprenticeship and Training Certification, attached after the Proposer's Certification.

18.6 Any bond furnished as security for performance shall include a provision as will guarantee faithful performance of the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq.

19. PATRIOT ACT COMPLIANCE

The Proposer represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Proposer further represents and warrants to the Village that the Proposer and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Proposer hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses(including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

20. INSURANCE REQUIREMENTS

20.1 Prior to starting the work, Contractor and any Subcontractors shall procure, maintain and pay for such insurance as will protect against claims for bodily injury of death, or for damage to property, including loss of use, which may arise out of operations by the Contractor or Subcontractor or any Sub-Sub Contractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below or any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law unless otherwise agreed to by the Village.

Workers Compensation	\$500,000	Statutory
Employers Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee

Comprehensive General Liability	\$2,000,000	Each Occurrence
	\$2,000,000	Aggregate
		<i>(Applicable on a Per Project Basis)</i>
Commercial Automobile Liability	\$1,000,000	Each Accident
Professional Errors & Omissions	\$2,000,000	Each Claim
(pursuant to section .9 below)	\$2,000,000	Annual Aggregate
Umbrella Liability	\$ 5,000,000	

- 20.2 Commercial General Liability Insurance required under this paragraph shall be written on an occurrence form and shall include coverage for Products/Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to defense and indemnity obligations and other contractual indemnity assumed under the Contract Documents. The limit must be on a "Per Project Basis"
- 20.3 Comprehensive Automobile Liability Insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles.
- 20.4 Workers Compensation coverage shall include a waiver of subrogation against the Village.
- 20.5 Comprehensive General Liability, Employers Liability and Commercial Automobile Liability Insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by Umbrella and/or Excess Liability policies.
- 20.6 Contractor and all Subcontractors shall have their respective Comprehensive General Liability (including products/completed operations coverage), Employers Liability, Commercial Automobile Liability, and Umbrella/Excess Liability policies endorsed to add the "Village of Downers Grove, officers, officials, employees and volunteers" as "additional insureds" with respect to liability arising out of operations performed; claims for bodily injury or death brought against Village by any Contractor or Subcontractor employees, or the employees of Subcontractor's subcontractors of any tier, however caused, related to the performance of operations under the Contract Documents. Such insurance afforded to the Village shall be endorsed to provide that the insurance provided under each policy shall be *Primary and Non-Contributory*.
- 20.7 Contractor and all Subcontractors shall maintain in effect all insurance coverages required by the Contract Documents at their sole expense and with insurance carriers licensed to

do business in the State of Illinois and having a current A. M. Best rating of no less than A- VIII. In the event that the Contractor or any Subcontractor fails to procure or maintain any insured required by the Contract Documents, the Village may, at its option, purchase such coverage and deduct the cost thereof from any monies due to the Contractor or Subcontractor, or withhold funds in an amount sufficient to protect the Village, or terminate this Agreement pursuant to its terms.

20.8 All insurance policies shall contain a provision that coverages and limits afforded hereunder shall not be canceled, materially changed, non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the Village. Renewal certificates shall be provided to the Village not less than five (5) prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to Village and shall provide satisfactory evidence of compliance with all insurance requirements. The Village shall not be obligated to review such certificates or other evidence of insurance, or to advise Contractor or Subcontractor of any deficiencies in such documents, and receipt thereof shall not relieve the Contractor or Subcontractor from, nor be deemed a waiver the right to enforce the terms of the obligations hereunder. The Village shall have the right to examine any policy required and evidenced on the Certificate of Insurance.

20.9 Only in the event that the Work under the Contract Documents includes design, consultation, or any other professional services, Contractor or the Subcontractor shall procure, maintain, and pay for Professional Errors and Omissions insurance with limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. If such insurance is written on a claim made basis, the retrospective date shall be prior to the start of the Work under the Contract Documents. Contractor and all Subcontractors agree to maintain such coverage for three (3) years after final acceptance of the Project by the Village or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

20.10 Any deductibles or self-insured retentions shall be the sole responsibility of the Insured. At the option of the Village, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Village, its officers, officials, employees and volunteers; or the Proposer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

21. COPYRIGHT/PATENT INFRINGEMENT

21.1 The Proposer agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Proposer that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

22. COMPLIANCE WITH OSHA STANDARDS

22.1 Equipment supplied to the Village must comply with all requirements and standards as specified by the Occupational Safety and Health Act. All guards and protectors as well as

appropriate markings will be in place before delivery. Items not meeting any OSHA specifications will be refused.

23. CERCLA INDEMNIFICATION

23.1 In the event this is a contract that has environment aspects, the Awarded Proposer shall, to the maximum extent permitted by law, indemnify, defend, and hold harmless the Village, its officers, employees, agents, and attorneys from and against any and all liability, including without limitation, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys' fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C.A. Sec. 9601, et seq., as amended, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Awarded Proposer, both before and after its disposal.

24. BUY AMERICA

24.1 The Contractor agrees to comply with 49 U.S.C.5323(j), the Federal Transportation Administration's (FTA) Buy America regulations at 49 C.F.R. Part 661, and any amendments thereto, and any implementing guidance issued by the FTA, with respect to this contract, when financed by Federal funds (through a grant agreement or cooperative agreement).

24.2 As a condition of responsiveness, the Contractor agrees to submit with its Bid submission, an executed Buy America Certificate, attached hereto.

25. CAMPAIGN DISCLOSURE

25.1 Any contractor, proposer, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate, attached hereto.

25.2 The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

25.3 Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

25.4 By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

26. SUBLETTING OF CONTRACT

26.1 No contract awarded by the Village shall be assigned or any part sub-contracted without the written consent of the Village Manager. In no case shall such consent relieve the Awarded Proposer from their obligation or change the terms of the contract.

27. TERM OF CONTRACT

27.1 This contract may be extended no more than twice for subsequent annual periods (two annual extensions) by mutual agreement of both parties, providing such agreement complies with Village purchasing policies and the availability of funds. However, if this contract is not one that is subject to extension, such information will be available in the detailed specifications or special conditions section, supra.

28. TERMINATION OF CONTRACT

28.1 ~~The Village reserves the right to terminate the whole or any part of this contract, upon written notice to the Awarded Proposer, for any reason and/or in the event that sufficient funds to complete the contract are not appropriated by the Village.~~

28.2 The Village further reserves the right to terminate the whole or any part of this contract, upon ten (10) days' written notice to the Awarded Proposer, in the event of default by the Awarded Proposer. Default is defined as failure of the Awarded Proposer to perform any of the provisions of this contract or failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event that the Awarded Proposer fails to cure the default upon notice, and the Village declares default and termination, the Village may procure, upon such terms and in such manner as the Village may deem appropriate, supplies or services similar to those so terminated. The Awarded Proposer shall be liable for any excess costs for such similar supplies or services unless acceptable evidence is submitted to the Village that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Awarded Proposer. Any such excess costs incurred by the Village may be set-off against any monies due and owing by the Village to the Awarded Proposer.

29. BILLING & PAYMENT PROCEDURES

29.1 Payment will be made upon receipt of an invoice referencing Village purchase order number. Once an invoice and receipt of materials or service have been verified, the invoice will be processed for payment in accordance with the Village payment schedule. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Proposer within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Proposer within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

29.2 The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Proposer requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1

et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

29.3 If this contract is for work defined as a "fixed public work" project under the Illinois Prevailing Wage Act, 820 ILCS 130/2, any contractor or subcontractor is required to submit certified payroll records along with the invoice. No invoice shall be paid without said records.

29.4 Please send all invoices to the attention of Village of Downers Grove, Accounts Payable, 801 Burlington, Downers Grove, IL 60515.

30. RELATIONSHIP BETWEEN THE PROPOSER AND THE VILLAGE

30.1 The relationship between the Village and the Proposer is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

31. STANDARD OF CARE

31.1. Services performed by Proposer under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representations express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinions, and documents or otherwise.

31.2 If the Proposer fails to meet the foregoing standard, Proposer will perform at its own cost, and without reimbursement from the Village, the professional services necessary to correct errors and omissions caused by Proposer's failure to comply with the above standard and reported to Proposer within one (1) year from the completion of Proposer's services for the Project.

31.3 For Professional Service Agreements (i.e. Engineer, Consultant): Project site visits by Proposer during construction or equipment installation or the furnishing of Project representatives shall not make Proposer responsible for: (i) constructions means, methods, techniques, sequences or procedures; (ii) for construction safety precautions or programs; or (iii) for any construction contractor(s') failure to perform its work in accordance with contract documents.

32. GOVERNING LAW

32.1 This Agreement will be governed by and construed in accordance with the laws of the State of Illinois without regard for the conflict of laws provisions. Venue is proper only in the County of DuPage and the Northern District of Illinois.

33. SUCCESSORS AND ASSIGNS

33.1 The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

The Proposer will provide a list of key staff, titles, responsibilities, and contact information to include all expected sub Proposers.

34. WAIVER OF CONTRACT BREACH

34.1 The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

35. AMENDMENT

35.1 This Agreement will not be subject to amendment unless made in writing and signed by all parties.

36. CHANGE ORDERS

~~36.1 The contract price is a "not-to-exceed" cost. At any time additional work is necessary or requested, and the not-to-exceed price is increased thereby, any change, addition or price increase must be agreed to in writing by all parties. The appropriate authorizing signature for the Village is the Village Manager.~~

~~36.2 Change orders for public works projects which authorize an increase in the contract price that is 50% or more of the original subcontract price or that authorize or necessitate any increase in the price of a subcontract under the contract that is 50% or more of the original subcontract price must be resubmitted for bidding in the same manner by which the original contract was bid. (50 ILCS 525/1)~~

37. SEVERABILITY OF INVALID PROVISIONS

37.1 If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

38. NOTICE

38.1 Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to the Village as follows:

Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

And to the Proposer as designated in the Contract Form.

III. DETAIL SPECIFICATIONS

RETAIL ELECTRIC SUPPLIER

The scope of services required of the successful Vendor is defined in the following:

1.1

The Village of Downers Grove is seeking opportunities to reduce electric supply costs at certain facilities within the ComEd service territory. Combined, approximately 29 ComEd accounts are involved in this request. Details regarding the associated accounts are available in Attachment A to this document. The Village seeks to enter into an agreement with a single Vendor for all accounts that result in cost savings and price stability, while retaining a high level of power supply reliability and customer service. The selected Vendor will be required to provide, or arrange for the provision of, power and energy onto the ComEd distribution delivery system, and arrangement with ComEd for delivery to the City's accounts. Electric power and energy service to accounts included in the final contract must be firm and uninterruptible, as is available under current ComEd bundled electric service.

1.1 A. Optional Pricing

For municipal Street Lights (See attachment B) For List of Village Street Lighting. Requirements same as in 1.1

1.2. Goals and Objectives

The Village goal is to establish a contract with one qualified Retail Electric Supplier with a proven track record of providing retail electricity service in Illinois, either directly or through a broker. Requirements Same as in 1.1.

1.3 Services Required

1.3.1 Electricity Supplies. Vendor will supply the firm power requirements to each of the accounts for which it is ultimately contracted to serve. Vendor must be certified by the Illinois Commerce Commission (ICC) as an Alternative Retail Electric Supplier (ARES) or as an Illinois Public Utility (collectively "Retail Electric Suppliers" or "RES").

Bidders must demonstrate their ability to provide electricity supplies sufficient to meet City requirements by submitting proof of current registration with the ICC and applicable regional transmission organizations (RTO): PJM Interconnection (PJM)

1.3.2 Transmission Services. The Vendor will be responsible for acquiring and paying all necessary transmission services to the Point(s) of Delivery including all electricity commodity costs, RTO charges, Congestion Charges, Distribution and Transmission Losses, and Capacity Charges.

Billing Services. Invoices from the local electric utility for distribution services will be issued by the local electric utility to Village facilities. The Vendor will be responsible for providing electricity billing information to the Village.

The Vendor shall be responsible for examining and assuring the accuracy of each local electric utility's monthly invoice(s) for the deliveries of electricity. In determining accuracy, the Vendor shall reconcile the volumes of electricity delivered by each Local Electric Utility with the Vendor's records regarding the volumes of electricity sold under the contract and shall determine and resolve any discrepancies which may exist as soon as is practicable.

In the event the actual billing quantity of electricity delivered to the facilities during the preceding month is not available by the contractual billing date, an estimated billing quantity shall be used which is based upon the estimated quantity of electricity delivered to the facility. Such estimates will then be corrected, if necessary, on the next succeeding billing quantity data delivery, or as soon thereafter as the actual quantity becomes available.

Bidders must demonstrate their ability to provide accurate aggregated monthly invoices based on a single unit price by submitting a copy of an actual monthly invoice for a current customer that documents a single monthly price applied across multiple separate accounts. Additionally, Bidders must demonstrate an ability to provide billing information via an online format.

1.4 Delivery Specifications (Including Schedules and Guarantees)

1.4.1 Quality and Measurement. Vendor must warrant that the Electricity sold and delivered to Buyer shall be of the specifications required by the RTO and Local Electric Utility.

All measurement standards shall be in accordance with those of the RTO and Local Electric Utility. Either party may challenge the accuracy of any meter or measuring equipment used to measure Vendor's electricity deliveries under this Contract. All testing of, and corrections to, such meters and measuring equipment shall be conducted in accordance with the applicable standards.

1.4.2 Title. Vendor warrants to Buyer 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 Buyer upon delivery at such Point(s) of Delivery.

1.5. Where Supplies Are To Be Delivered

Delivery of all electricity supplied by Vendor to Buyer shall be made at appropriate node locations to effect delivery to the Point(s) of Delivery identified in Attachment A of this document.

1.6 Other Specifications

1.6.1 Creditworthiness. Bidders must demonstrate their creditworthiness to the Village by providing the following:

1.6.1.1 Acceptable Credit Rating: Bidders must demonstrate creditworthiness by submitting their most recent copy of an audited annual report that identifies the company's long term credit rating. Brokers shall submit similar data for the supplier they represent. The following table will be used to cross reference credit ratings from the various credit rating agencies:

AGENCY		
Moody's	Standard and Poor's	Fitch
Aaa	AAA	AAA
Aa	AA	AA
A	A	A
Baa	BBB	BBB

1.6.2 Taxes and Penalties. Vendor shall pay or cause to be paid taxes lawfully levied against Vendor prior to the delivery of electricity by Vendor to Buyer hereunder and shall fully indemnify Buyer from and against all claims with respect thereto. Unless specified otherwise, the price Buyer shall pay Vendor for electricity sold and delivered shall not include any applicable state or local electricity revenue, utility, sales or use tax which may be assessed as a result of sales of electricity hereunder.

The Vendor shall pay all penalties and fines and all federal, state and local sales, use and public utility taxes associated with or arising out of the sales contemplated by the contract. The Buyer will pay to the Vendor the amount of any tax owing documentation from the Vendor that the Vendor has paid such tax amount to the applicable government authority and that the Vendor determined in good faith that such tax was required to be paid (notwithstanding the right of the Vendor to challenge the position of the applicable government authority in court). If the Buyer pays the amount of such tax or any sales related tax under protest, any amount payable due to shortages/excesses will be the sole responsibility of the Vendor.

Vendor agrees to provide reasonable assistance to the Buyer in applying for a refund of any tax, including filing in the name of the Vendor, if required, with the applicable government authority, at the Buyer's cost and expense, along with any request for refund or protest of such tax or any other documentation deemed reasonably necessary by the Buyer for the refund of such tax. In no event will Buyer be liable for any penalties or premiums on any tax amounts the Vendor fails to pay.

Any penalties assessed by a Transmission provider or Local Electric Utility for electricity deliverable under this Contract shall be promptly paid by Vendor, including penalties incurred by individual suppliers as a result of errors relating to inaccurate data provided to Vendors in such instances where errors could normally be avoided. The Vendor will be responsible for all penalties, fees and charges incurred by the City resulting from the misallocation of supply volumes.

Buyer's State of Illinois tax exemption number and Federal tax exemption certificate will be available to the successful Bidder upon request.

1.6.3 Personnel/Equipment Requirements. Vendor must assign and maintain a staff of competent personnel who are fully equipped, available as needed, and qualified to perform the services required by this Agreement. Vendor must designate a contact person who shall have primary responsibility for Vendor's responsibilities to Buyer.

Bidders or other agents must demonstrate their ability to provide sufficient levels of service by submitting a detailed plan of service delivery that details the experience of the staff assigned to manage the Village contract, and the processes that will ensure prompt responses to Village program requirements.

1.6.4 Contract Monitoring

1.6.4.1 Vendors are responsible for the faithful performance of the contract and shall have internal monitoring procedures and processes to ensure compliance.

1.6.4.2 The Village reserves the right to monitor and track Vendor's performance over the course of the contract including any warranty term. The information gathered may be used in administration of the contract including payment, and may be used when evaluating the vendor in future procurements.

1.7. Term of Contract

The contract will begin upon execution of final contract documents with electricity delivery services to commence for each account after the final billing period in to be May, 2010

To Continue through the last scheduled reading before June, 2012. with respect to the delivery of power. The Village reserves the right to direct the selected vendor to secure fixed priced blocks of power prior to the commencement of delivery service to the contracted accounts. We anticipate that this process will be completed and a contract executed by no later than January 15, 2010, The Village also wishes to have the opportunity to blend and extend should prices fluctuate to the benefit of the Village. The successful vendor will offer this service.

2. SPECIFIC INFORMATION ABOUT THIS RFP

2.1 **RFP Contact:** The RFP Contact, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful Vendor.

Name, RFP Contact: Theresa Tarka

Title: Purchasing Department
Street Address: 801 Burlington Avenue
Downers Grove, IL. 60515
Fax: (630) 434-5571

2.2 Questions: Please direct all questions to the RFP Contact. 2.3

Deadline for Submitting Fixed Price Bids November 30, 2009
2:00 p.m.

Opening Date and Time of Fixed Price Bids November 30, 2009
2: 00 pm

Anticipated Announcement of Successful Vendor January 5, 2010

2.5 Number of Copies: 2

IF INVITED BY VILLAGE OF DOWNERS GROVE, SUBMIT FIXED PRICE PROPOSALS TO:

Village of Downers Grove

Location: 801 Burlington Downers Grove, IL. 60515

Attn: Theresa Tarka, Purchasing Dept

Village of Downers Grove

Electricity Service RFP

Due Date and Time: November 30, 2009, 2009 2:00 pm

Vendor's Name and Address: DEREK BETLEJEWSKI, CHAMPION ENERGY,
914 DEARBORN CIR. CAROL STREAM, IL 60108

Vendor's E-Mail Address: DBETLEJEWSKI@CHAMPIONENERGYSERVICES.COM

2.7 Opening: The Village will open all Fixed Price Electricity Bids that are submitted in a proper and timely manner, and will record the names and other information specified by law. All offers become the property of the Village and will not be returned except in the case of a late submission. Offers will be opened at the below address:

801 Burlington Avenue
Downers Grove, IL. 60515

2.9 **Offer Firm Time:**

90 Days from Opening. Offers for Vendor margin on commodity and transmission related portions of the pricing proposal are to remain firm for a period of 90 days.

3. **INSTRUCTIONS FOR PREPARING AND SUBMITTING OFFERS**

3.1 **General Instructions:**

3.1.1 These instructions prescribe the format and content of the Offer. They are designed to facilitate a fair and uniform review process. Failure to adhere to this format will affect our evaluation and may result in disqualification of the Offer.

3.1.2 The Village will conduct the following analysis in selecting a Vendor:

3.1.2.1 Technical Evaluation. The Village will assign a pass/fail grade for vendors based on the following criteria:

- a. Standard Contract Terms and Conditions.
- b. Company Experience.
- c. Company Credit Rating.

3.1.2.2 Fixed Price Bid. The Village will review the fixed-price bid for electricity from the pool of vendors that receive a "Pass" score on the Technical Evaluation. The lowest responsive bidder for the fixed-price bid will be awarded a contract with the Village based on the Standard Terms and Conditions included in the Vendor's standard supply contract.

3.1.3 If the Vendor designates any information in its Offer as confidential, the Vendor must also submit one (1) copy of the Offer from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Offer as possible.

3.1.4 Offers must not contain promotional or display materials.

3.1.5 Attachments must be referenced in the Offer.

3.2 **Technical Proposal:** The following documents and responses will be included in the Technical Proposal **and tabbed as such in the order given below:**

3.2.1 Transmittal Letter: An individual, or agent authorized to legally bind the Vendor must sign the transmittal letter. The person who signs the transmittal letter will be considered the contact person for all matters pertaining to the Offer unless the Vendor designates another person in writing. The letter must include the Vendor's mailing address, e-mail address, fax number and telephone number.

Any request for confidential treatment of information must be included in the transmittal letter in addition to the specific statutory basis supporting the request, an explanation of why disclosure of the information is not in the best interest of the public, and the specific basis under Section 7 of the Illinois Freedom of Information Act (5 ILCS 140/7) for the exemption from disclosure of such information. The transmittal letter must also contain the name, address and telephone number of the individual authorized to respond to the Village about the confidential nature of the information.

3.2.2 Table Of Contents: The Vendor must include a table of contents in its Offer. Offers must be page numbered sequentially from front to back.

3.2.3 Executive Summary: The Vendor must prepare an Executive Summary and overview of the services it is offering including all of the following information:

3.2.3.1 Statements that demonstrate that the Vendor understands the services as specified in the RFP

3.2.3.2 An overview of the Vendor's plans for providing reliable power and energy to the Village facilities in a manner that minimizes the Village's exposure to uncertainty in prices and comports with the consolidation aspects and billing procedures utilized by the Village.

3.2.3.3 A demonstration of the Vendor's knowledge of the Illinois retail electric market, including the provisions contained within the tariffs of the distribution and transmission providers as well as the regulatory environment and other elements that can affect the supplier's capability to perform under the agreement.

3.2.4 Technical Experience: The Vendor must provide the following information regarding its experience:

- 3.2.4.1 Number of years experience with providing types of services specified in the RFP
- 3.2.4.2 Describe the level of technical experience in providing the types of services specified in the RFP
- 3.2.4.3 List all services and other relevant experience similar to those specified in the RFP.
- 3.2.4.4 Provide at least three references of multi-site, multi-account, municipal clients that the vendor has served for at least the last twelve months
- 3.2.4.5 **Financial Capacity Information:** Submit the most recent audited end of year financial statement. Vendor may also be required to provide additional financial information upon request.

3.3 Fixed Price Proposal:

The Village is requesting a Fixed Price Proposal from Vendors. The Village will request the fixed price proposal to be submitted by 2:00 pm on the afternoon of Monday, November 30, 2009 to the RFP Contact noted in section 45.2 above. **Bidders must commit to holding fixed price proposal offerings for a period of twenty-four (24) hours.**

The Village will open the Fixed Price Proposals at 2:00 pm on the afternoon of Monday, November 30, 2009. The lowest qualified price proposal will be certified, and the City Council will approve a supply contract with that Vendor.

Detail pricing requirements with at least the following categories of information:

- 3.3.1 **Fixed Unit Price:** The Vendor will clearly identify the fixed unit price for the full electricity requirements of all accounts identified in Attachment A of this document for the contract period starting with the billing period after May 31, 2010.

The fixed unit price shall be presented in \$/kWh, and shall include the following costs:
All-Inclusive” Pricing includes:

- a. Energy Commodity Charges
- b. PJM ISO Fees
- c. Congestion
- d. Distribution and Transmission Losses
- e. Capacity Charges
- f. Vendor Margin
- g. Transmission
- h. Ancillary Services
- i. RFP Charges Included ? Yes or No

3.3.2 **Prompt Payment Discounts:** 0 % discount for payment within
 days of delivery.

Do you accept ACH Payments: YES

4.3 Organization And Authorization Companies submitting bids must be properly organized under law and duly authorized to do business in the State of Illinois.

**ATTACHMENT A
VILLAGE OF DOWNERS GROVE**

Commonwealth Edison

LOCATION	ACCOUNT #	METER #
237 Odgen Ave, SE Corner Florence	0715060138	141301488
6705 Main St., Water Tower	1537047029	140069744
6482 Woodward Ave Lite Rt/25	0855051035	117793401
1202 75th St	1365059017	141266547
5217 Katherine	0351143087	140384934
OE 55th St. & Belmont Rd. Wtr Twr	0237084061	94436132
2304 Maple Ave Unit R	6770399003	999910433
3701 Highland Av	8361372007	117904236
" " " "	"	140037458
924 67th St	2565134038	140384931
4409 Downers DR	1731125046	140384910
7100 Woodward	1569015006	078981783
2101 75th St	0063130094	095053662
3501 E Finley	2739126064	141238960
O E Finley, 1S Opus BRK BD/WTTWR	1683140106	140384909
1037 Summit	2379165118	094436003
1037 Summit Tornado Siren	0249158003	141237388
Pump 5325 Brookbank Rd	0523134063	141503633
OS Curtiss Park Deck OE Main ST	3003102040	141238369
" " " "	"	141379146
5117 Main ST Unit B. Basement	6936554037	140238930
5117 Main ST 02 Steps on Main	7104205046	117928808
5117 Main ST	7104203024	140056366
" " " "	"	140253872
5099 Fairview Ave Train Station	6933565001	141115414
" " " "	"	141237004
5099 Fairview Ave Train Platform	6933538013	094965086
1134 Gilbert Rear Commuter Lot	3244105050	140160521
5001 Main St	0384014000	115185455
5322 Park Ave	0399047048	093756098

**ATTACHMENT B
VILLAGE OF DOWNERS
GROVE**

Village Lights Rate 25	Quantity	Wattage	Type
	735	100	HPS
	320	150	HPS
	301	250	HPS
	46	400	HPS
	74	286	MV

ComEd Lights Rate 23	Quantity	Wattage	Type
	174	250	HPS
	123	150	HPS
	356	100	HPS
	30	400	MV
	7	250	MV
	32	175	MV

Attachment C

Vendor Name: CHAMPION ENERGY SERVICES

The above identified Vendor submits the following fixed price proposal to the Village of Downers Grove response to a Request for Proposals for Electric Services for physical facility accounts.

The fixed price cited below includes the following cost components for a period commencing after the final billing period in December 2009 and continuing through the last scheduled reading before June 1, 2010 for each account identified in Attachment A of this document:

- a. Energy commodity Charges
- b. PJM Charges
- c. Congestion Charges
- d. Distribution and Transmission Losses
- e. Capacity Charges
- f. Vendor Margin
- g. Transmission
- h. Ancillary Services


I. RPS (RENEWABLE PORTFOLIO STANDARDS)

The fixed price proposed is:

~~\$0.00314~~ /kWh (BREAKDOWN IN OUTLINE)
see Addendum Ev. A

A discount equal to 0 % will be applied for payments made within days of delivery.

The above fixed price offer is tendered on the authority of the undersigned, and will be considered as available to the Village of Downers Grove for a period of twenty-four (24) hours starting at 2:00pm on November 30, 2009 and extending to 2:00 pm on December 1, 2009.

Authorizing Signature: 

Date: 11-30-09

Printed Name: DEREK BETLEJEWSKI

Title: ENERGY ORIGINATOR MANAGER

IV. PROPOSAL/CONTRACT FORM

*****THIS PROPOSAL, WHEN ACCEPTED AND SIGNED BY AN AUTHORIZED SIGNATORY OF THE VILLAGE OF DOWNERS GROVE, SHALL BECOME A CONTRACT BINDING UPON BOTH PARTIES.**

Entire Block Must Be Completed When A Submitted Bid Is To Be Considered For Award

PROPOSER:

CHAMPION ENERGY SERVICES

Date: 11-30-09

Company Name

MEMITH@CHAMPIONENERGYSERVICES.COM

Email Address

13831 NW. FWY

Street Address of Company

MIKE SMITH

Contact Name (Print)

HOUSTON TX 77040

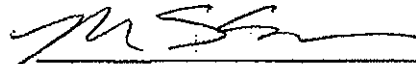
City, State, Zip

877-653-5090

24-Hour Telephone

6306651452

Business Phone



Signature of Officer, Partner or Sole Proprietor

7133668819

Fax

Mike S. Smith, SVP OPERATIONAL & Chief Marketing officer

Print Name & Title

ATTEST: If a Corporation


Signature of Corporation Secretary

VILLAGE OF DOWNERS GROVE:

ATTEST:

Authorized Signature

Signature of Village Clerk

Title

Date

Date

In compliance with the specifications, the above-signed offers and agrees, if this Proposal is accepted within 90 calendar days from the date of opening, to furnish any or all of the services upon which prices are quoted, at the price set opposite each item, delivered at the designated point within the time specified above.

CAMPAIGN DISCLOSURE CERTIFICATE

Any contractor, proposer, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate, attached hereto.

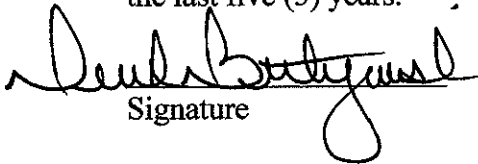
The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Bidder/vendor has not contributed to any elected Village position within the last five (5) years.


Signature

DEREK BETLEJEWSKI
Print Name

Bidder/vendor has contributed to an elected Village position within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name



VENDOR W-9 REQUEST FORM

The law requires that we maintain accurate taxpayer identification numbers for all individuals and partnerships to whom we make payments, because we are required to report to the I.R.S all payments of \$600 or more annually. We also follow the I.R.S. recommendation that this information be maintained for all payees including corporations.

Please complete the following substitute W-9 letter to assist us in meeting our I.R.S. reporting requirements. The information below will be used to determine whether we are required to send you a Form 1099. Please respond as soon as possible, as failure to do so will delay our payments.

BUSINESS (PLEASE PRINT OR TYPE):

NAME: CHAMPION ENERGY SERVICES
ADDRESS: 13831 NORTHWEST FWY # 250
CITY: HOUSTON
STATE: TX
ZIP: 77040
PHONE: 630-605-1452 FAX: 713-366-8819
TAX ID #(TIN): 30-0394593

(If you are supplying a social security number, please give your full name)

REMIT TO ADDRESS (IF DIFFERENT FROM ABOVE):

NAME: _____
ADDRESS: _____
CITY: _____
STATE: _____ ZIP: _____

TYPE OF ENTITY (CIRCLE ONE):

- Individual
- Sole Proprietor
- Partnership
- Medical
- Charitable/Nonprofit
- Limited Liability Company - Individual/Sole Proprietor
- Limited Liability Company-Partnership**
- Limited Liability Company-Corporation
- Corporation
- Government Agency

SIGNATURE: *[Signature]* DATE: 11-30-09

PROPOSER'S CERTIFICATION (page 1 of 3)

With regard to RETAIL ELECTRIC SUPPLIER, proposer DEREK BEREJEWSKI hereby certifies
(Name of Project) (Name of Proposer)
the following:

1. Proposer is not barred from bidding this contract as a result of violations of Section 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33E-4 (Bid-Rotating);
2. Proposer certifies that it has a written sexual harassment policy in place and is in full compliance with 775 ILCS §12-105(A)(4);
3. Proposer certifies that not less than the prevailing rate of wages as determined by the Village of Downers Grove, DuPage County or the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing work for the Village of Downers Grove. All bonds shall include a provision as will guarantee the faithful performance of such prevailing wage clause. Proposer agrees to comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1 *et seq.*, for all work completed. Proposer agrees to pay the prevailing wage and require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform work pursuant to this contract or related subcontract. Proposer and each subcontractor shall keep or cause to be kept an accurate record of names, occupations and actual wages paid to each laborer, workman and mechanic employed by the Proposer in connection with the contract. This record shall be sent to the Village on a monthly basis along with the invoice and shall be open to inspection at all reasonable hours by any representative of the Village or the Illinois Department of Labor and must be preserved for four (4) years following completion of the contract. Proposer certifies that proposer and any subcontractors working on the project are aware that filing false payroll records is a class B misdemeanor and that the monetary penalties for violations are to be paid pursuant to law by the proposer, contractor and subcontractor. The Village shall not be liable for any underpayments. If applicable: Since this is a contract for a fixed public works project, as defined in 820 ILCS 130/2, Contractor agrees to post at the job site in an easily accessible place, the prevailing wages for each craft or type of worker or mechanic needed to execute the contract or work to be performed.
4. Proposer certifies that it is in full compliance with the Federal Highway Administrative Rules on Controlled Substances and Alcohol Use and Testing, 49 C. F.R. Parts 40 and 382 and that all employee drivers are currently participating in a drug and alcohol testing program pursuant to the Rules.
5. Proposer further certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue, or that Proposer is contesting its liability for the tax delinquency or the amount of a tax delinquency in accordance with the procedures established by the appropriate Revenue Act. Proposer further certifies that if it owes any tax payment(s) to the Department of Revenue, Proposer has entered into an agreement with the Department of

PROPOSER'S CERTIFICATION (page 2 of 3)

Revenue for the payment of all such taxes that are due, and Proposer is in compliance with the agreement.

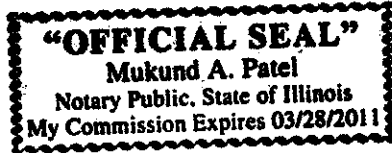
BY: [Signature]
Proposer's Authorized Agent

300394593

FEDERAL TAXPAYER IDENTIFICATION NUMBER

or _____
Social Security Number

Subscribed and sworn to before me
this 30th day of NOVEMBER 2009



[Signature]
Notary Public)

(Fill Out Applicable Paragraph Below)

(a) Corporation

The Proposer is a corporation organized and existing under the laws of the State of _____, which operates under the Legal name of _____, and the full names of its Officers are as follows:

President: _____

Secretary: _____

Treasurer: _____

and it does have a corporate seal. (In the event that this bid is executed by other than the President, attach hereto a certified copy of that section of Corporate By-Laws or other authorization by the Corporation which permits the person to execute the offer for the corporation.)

(b) Partnership

Signatures and Addresses of All Members of Partnership:

JIM CRANE - 13831 NW. Frewy, HOUSTON TX 77040
ROB DOTY - 13831 NW. Frewy, HOUSTON TX 77040

PROPOSER'S CERTIFICATION (page 3 of 3)

CHAMPION ENERGY SERVICES LLC

The partnership does business under the legal name of: CHAMPION ENERGY SERVICES
which name is registered with the office of ILLINOIS COMMERCE COMM in the state of
IL.

(c) Sole Proprietor

The Supplier is a Sole Proprietor whose full name is: _____
and if operating under a trade name, said trade name is: _____
which name is registered with the office of _____ in the state of
_____.

5. Are you willing to comply with the Village's preceding insurance requirements within 13 days of the award of the contract?

Insurer's Name ~~CERTIFICATE ATTACHED~~ To
Agent _____ be provided
Street Address _____
City, State, Zip Code _____
Telephone Number _____

I/We affirm that the above certifications are true and accurate and that I/we have read and understand them.

Print Name of Company: CHAMPION ENERGY SERVICES LLC

Print Name and Title of Authorizing Signature: DEREK BOTEJEWSKI
ENERGY ORIGINATOR MGR

Signature: [Handwritten Signature]

Date: 11-30-09

Apprenticeship and Training Certification

(Does not apply to federal aid projects. Applicable only to maintenance and construction projects that use Motor Fuel Tax funds or state grant monies)

Name of Proposer: CHAMPION ENERGY

In accordance with the provisions of Section 30-22 (6) of the Illinois Procurement Code, the proposer certifies that it is a participant, either as an individual or as part of a group program, in the approved apprenticeship and training programs applicable to each type of work or craft that the proposer will perform with its own forces. The proposer further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either (a) is, at the time of such bid, participating in an approved, applicable apprenticeship and training program; or (b) will, prior to commencement of performance of work pursuant to this contract, begin participation in an approved apprenticeship and training program applicable to the work of the subcontract. The Illinois Department of Labor, at any time before or after award, may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and any or all of its subcontractors. Applicable apprenticeship and training programs are those that have been approved and registered with the United States Department of Labor. The proposer shall list in the space below, the official name of the program sponsor holding the Certificate of Registration for all of the types of work or crafts in which the proposer is a participant and that will be performed with the proposer's forces. Types of work or craft work that will be subcontracted shall be included and listed as subcontract work. The list shall also indicate any type of work or craft job category that does not have an applicable apprenticeship or training program. **The proposer is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed. Return this with the bid.**

The requirements of this certification and disclosure are a material part of the contract, and the contractor shall require this certification provision to be included in all approved subcontracts. In order to fulfill this requirement, it shall not be necessary that an applicable program sponsor be currently taking or that it will take applications for apprenticeship, training or employment during the performance of the work of this contract.

Print Name and Title of Authorizing Signature: DEREK BETLEJEWSKI
Signature: *Derek Betlejewski* ENERGY ORGANIZATION MGR.
Date: 11-30-09

BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products when Federal funds (Grant Agreement or Cooperative Agreement) are used.

Instructions:

Bidder to complete the Buy America Certification listed below. Bidder shall certify EITHER COMPLIANCE OR NON-COMPLIANCE (not both). This Certification MUST BE submitted with the Bidder's bid response.

Special Note: Make sure you have signed only one of the above statements – either Compliance OR Non-Compliance (not both).

Certificate of Compliance

The bidder or offeror hereby certifies that it **will** meet the requirements of 49 U.S.C. 5323(j)(1), as amended, and the applicable regulations in 49 CFR Part 661.

Signature *David Battagione*

Company Name CHAMPION ENERGY SERVICES

Title ENERGY ORIGINATION MGR.

Date 11-30-09

Certificate of Non-Compliance

The bidder or offeror hereby certifies that it **cannot** comply with the requirements of 49 U.S.C. 5323(j)(1), as amended, and 49 C.F.R. 661, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Signature _____

Company Name _____

Title _____

Date _____

AFTER THIS CERTIFICATE HAS BEEN EXECUTED, A BIDDER MAY NOT SEEK A WAIVER.

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy America requirement.

Suspension or Debarment Certificate

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00 contractors receiving individual awards for \$100,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, the bidder certifies to the best of its knowledge and belief, that the company and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal, state or local governmental entity, department or agency.
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, or convicted of or had a civil judgment against them for a violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification: and
4. Have not within a three-year period preceding this application/proposal/contract had one or more public transactions (Federal, State or local) terminated for cause or default.

If the bidder is unable to certify to any of the statements in this certification, bidder shall attach an explanation to this certification.

Company Name: CHAMPION ENERGY

Address: 13831 NW. FWY

City: HOUSTON, TX Zip Code: 77040

Telephone: (630) 665 1452 Fax Number: (713) 366 - 8819

E-mail Address: DBETLEJEWSKI@CHAMPIONENERGYSERVICES.COM

Authorized Company Signature: [Signature]

Print Signature Name: DEBETLEJEWSKI Title of Official: ENERGY ORIGIN MGR

Date: 11-30-09

Addendum A



GENERAL TERMS AND CONDITIONS

This **COMMERCIAL ENERGY SALES AGREEMENT** ("Agreement") is entered into and made by and between Champion Energy, LLC ("Champion") and the buyer of retail electricity identified herein ("Buyer"). This Agreement shall be effective as of the date signed below (the "Effective Date"). Champion and Buyer may be individually referred to as "Party" or collectively as "Parties". The Parties hereby agree as follows:

- 1. Purchase and Sale:** Champion shall sell and Buyer shall purchase and receive electric energy for Buyer's facility(ies) specified in Exhibit "D" ("Delivery Point(s)") at the price(s) per kilowatt hour (kWh) specified on Exhibit "A" ("Contract Price"). The electric energy will be delivered to a point or points on the transmission system operated by PJM Interconnection LLC ("PJM") as identified by Commonwealth Edison Company ("ComEd"). Delivery to meters corresponding to each Delivery Point will be made by ComEd.
- 2. Metering:** All energy delivered hereunder ("Usage") shall be and can only be, measured by ComEd at ComEd's meters located at each Delivery Point. Actual Usage shall be the primary method of calculating the monthly charges for Buyer. However, Champion may use estimated Usage if measurements of actual Usage are not received timely from ComEd, in which case Champion will make appropriate adjustments upon receipt of actual Usage. Champion cannot guarantee a switch of Buyer's account(s) to Champion will occur by a specific date, and Champion shall not be liable for delays in this process caused by PJM or ComEd. The Service Start Date shall be the date upon which a particular account is switched to Champion. The Service Start Date is typically the scheduled read date that occurs in the month and year identified as the Start Date specified in Exhibit "A." The Service End Date is typically the scheduled read date that occurs in the month and year identified as the End Date specified in Exhibit "A." Each account may have a separate Service Start Date and Service End Date. Champion acknowledges and represents that it is familiar with the rules and procedures of the local distribution company (ComEd) regarding transfer of service to an alternative retail electric supplier.
- 3. Pricing:** Buyer will pay (1) the Contract Price times the Usage, plus (2) for Usage outside the established Consumption Variance Allowance or for Usage that is for a time period outside of the Term, any amounts calculated per Paragraph 5 below. The Contract Price per kWh includes energy commodity charges and the costs identified on Exhibit "B". The costs and any taxes described in Exhibit "C" will be passed-through to Buyer without markup.
- 4. Billing & Payment:** Buyer will be directly billed by ComEd for all electric delivery services provided by ComEd. Champion will separately invoice Buyer for the total amount due for electricity supplied to Buyer during each month according to Champion's regular billing cycle. Such invoice shall also include all applicable Taxes and other charges applicable to Buyer's account as provided in this Agreement. Payment shall be due to Champion within the maximum permitted in accordance with the IL Prompt Payment Act Payment will be made upon receipt of an invoice referencing Village purchase order number. Once an invoice and receipt of materials or service have been verified, the invoice will be processed for payment in accordance with the Village payment schedule. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Prosper within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Proposer within this 60 day period, and interest penalty of 1.0% or any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made. Champion charges \$25.00 for each returned check (or ACH). Buyer shall be responsible for any and all collection costs incurred by Champion.
- 5. Consumption Variance Allowances and Pricing Parameters:** For periods during the Term in which Usage varies from the Contract Quantity by a percentage greater than the Consumption Variance Allowance as shown on Exhibit "A", or Usage occurs outside of the time period between the Service Start Date and the Service End Date, Champion may charge the incremental cost or value of providing electricity to Buyer, based on the difference between the Contract Price and the PJM Rate. "PJM Rate" means PJM's real-time locational marginal price for ComEd zone (as defined by PJM) plus retail margin, broker fees, the costs identified on Exhibit "B" and any other similar charges incurred by Champion during the course of the Term. The PJM Rate excludes Exhibit "C" items, which will be invoiced to Buyer at cost. Appropriate adjustments to the foregoing amounts will be made for partial months.
- 6. Disputed Amounts:** If there is a good faith dispute regarding any invoice, Buyer will pay the undisputed amount of any invoice by the applicable due date, and the Parties will attempt to expeditiously resolve the dispute. Notice of any dispute must be provided within a reasonable period of time and as otherwise required by applicable law. In no event shall the disputed portion include a dispute for Taxes.
- 7. Blend and Extend - Rate Adjustment and Term Extension:** At any time during the Term, Buyer may request that the Term be extended or shortened and the Contract Price then in effect be changed. Upon request, Champion will submit an offer to Buyer reflecting a revised Contract Price and new Term. Buyer will be under no obligation to accept such offer.
- 8. Adding and Deleting Delivery Points:** Buyer is permitted to add or delete Delivery Points provided that (i) there is no Event of Default by Buyer, (ii) any such Delivery Point to be added is located within the ComEd area currently served by Champion; and (iii) the addition or deletion of the Delivery Point(s) does not materially change Buyer's Contract Quantity or the supply group designation for Buyer's account determined by ComEd that served as the basis for Champion's determination of the initial Contract Price.
- 9. Performance Assurance:** If Champion determines, in its reasonable discretion, that Buyer's creditworthiness or ability to perform under this Agreement has become unsatisfactory (including, but not limited to, Buyer's late payment of any amounts due under this Agreement), Champion may require that Buyer provide collateral for its obligations in the form of cash, letter(s) of credit, corporate or personal guarantees, or other security in form and amount reasonably acceptable to Champion ("Performance Assurance"). If Buyer fails to provide Performance Assurance within three (3) business days of receipt of such notice, an Event of Default shall be deemed to have occurred.
- 10. Term:** This Agreement shall commence on the Effective Date and shall continue in effect through the last occurring Service End Date (the "Term") unless sooner terminated as otherwise provided in this Agreement.

- 11. Assignment and Binding Effect:** Neither Party may assign this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld. However, Champion may, without the consent of Buyer, (a) assign this Agreement to any affiliate or to any party succeeding to a substantial portion of the assets of Champion, or (b) pledge or otherwise collaterally assign its rights under this Agreement to any entity providing extensions of credit to Champion. Any successor or assignee of the rights of any Party shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original Party under this Agreement. Any assignment in violation of this Paragraph 11 shall be void.
- 12. Regulatory Events:** If there is a change in law, administrative regulation, rule, PJM design or structure, order, judicial decision, statute, or a change in an interpretation or application of any of the foregoing (collectively, a "Regulatory Event") and such Regulatory Event causes Champion to directly or indirectly incur any capital, operating, commodity or other costs (including, but not limited to increased Taxes) relating to the provision of services contemplated herein above those existing prior to the date of the Regulatory Event, then Champion shall be permitted to pass through the economic effects of such Regulatory Event to Buyer. For the avoidance of doubt, an increase in the rate for Network Integration Transmission Service by ComEd as approved by the FERC shall be a Regulatory Event.
- 13. Event of Default:** An "Event of Default" means (a) a representation or warranty made by a Party to this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Term (excluding Buyer's representations in Section 28, subsections (a), (b) and (c) regarding Contract Quantities and Usage, which the Parties agree will not be a basis for an Event of Default); (b) the failure of a Party to perform any covenant set forth in this Agreement which is not excused by Force Majeure or cured within five (5) business days after written notice thereof; (c) Buyer is late in the payment of two (2) or more invoices in any six (6) month period; (d) the failure of Buyer to provide Performance Assurance in accordance with Paragraph 9; (e) the failure of Buyer to utilize Champion as its sole supplier of electric energy for its Delivery Point(s) at any time during the Term (including but not limited to a switch of Buyer's electric service to another provider); (f) a Party makes an assignment or any general arrangement for the benefit of creditors or otherwise becomes bankrupt or insolvent; or (g) ComEd disconnects service to one or more of Buyer's accounts as a result of Buyer's non-performance. The Party alleged to have taken, caused or been affected by any of the actions set forth above shall be considered the "Defaulting Party" and the other Party shall be considered the "Non-Defaulting Party."
- 14. Termination:** Where there exists an Event of Default, either Party may terminate this Agreement upon notice to the other Party (a "Termination"). If Buyer is the Defaulting Party, Champion reserves the right to provide an invoice to Buyer for the sum of (i) any remaining amounts due under this Agreement pursuant to Paragraph 4 (defined as any current or past due amounts for previously supplied electricity); and (ii) an amount ("Settlement Amount") calculated as the positive difference between the Contract Price minus the then current Market Price of full requirements electricity multiplied by the Remaining usage under this Agreement. Payment shall be due to the Non-Defaulting Party within fifteen (15) days of notice provided. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other arising from this Agreement through netting, in which case all amounts owed by each Party to the other Party shall be netted so that only the excess amount remaining due shall be paid by the owing Party.
- 15. Force Majeure:** Except for obligations for the payment of money, if either Party is rendered unable, wholly or in part, to perform its physical obligations under this Agreement (including but not limited to the delivery or receipt of electricity hereunder) due to Force Majeure, the physical obligations of each Party will be suspended for the duration of any inability to perform for up to twenty (20) consecutive days. A Party claiming Force Majeure (the "Claiming Party") will notify the other Party by written confirmation, describing the nature, and estimated duration of such inability to perform. The cause of such inability to perform will be remedied with all reasonable dispatch. "Force Majeure" means any event or occurrence (including, but not limited to "Acts of God") that is beyond the control of a Party and that: (a) is not the result of the negligence of the Claiming Party; and (b) which, by the exercise of due diligence, the Claiming Party is unable to avoid or cause to be avoided. A claim of Force Majeure may not be based on: (a) Buyer's inability to economically use electricity purchased under this Agreement; (b) Buyer's election to close, sell, abandon or materially curtail or discontinue operation of Buyer's facilities due to any economic circumstance; (c) a Party's inability to acquire electricity at a particular price; or (d) a Party's ability to sell electricity at a price above the Contract Price.
- 16. Forward Contract:** The Parties acknowledge and agree that this Agreement and the transaction(s) contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United Bankruptcy Code.
- 17. Governing Law/Counterparts:** This Agreement will be interpreted in accordance with the substantive and procedural laws of the State of Illinois without giving effect to laws and rules governing conflicts of laws. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and be deemed binding through the use of facsimile signatures.
- 18. Indemnification:** Each Party will indemnify, defend and hold harmless the other Party, its officers, agents, and employees from any claims, damages and actions of any kind arising from personal injury (including without limitation, death), tangible property damage or any other damages arising from or out of any event, circumstance, act or incident occurring or existing with respect to the energy provided pursuant to this Agreement, whether or not control and title to the energy is vested in Buyer. It is understood Champion will not be responsible for any damages associated with failure to deliver the electric energy or any other damages alleged to have arisen prior to delivery to Buyer's meter(s). This provision survives the termination or expiration of this Agreement.
- 19. Limitation of Remedies, Liability, Damages & Disclaimer of Warranties:** FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED, SUCH EXPRESS REMEDY WILL BE THE SOLE AND EXCLUSIVE REMEDY. IF NO EXPRESS REMEDY IS PROVIDED, A

PARTY'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSES RELATED THERETO INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE CHARACTERIZED OR DEEMED TO BE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN PARAGRAPH 25, CHAMPION EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR ORAL, WITH RESPECT TO THE ELECTRICITY SUPPLIED UNDER THIS AGREEMENT, INCLUDING EXPRESS, IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS SET FORTH IN THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT.

20. **Modification of Agreement:** Any alteration, deletion or addition to the Agreement shall be effective only if made in a written amendment executed by both Parties. No amendment or modification shall be made to this Agreement by course of performance, course of dealing or consumption of trade, or by the failure of a Party to object to a deviation from the terms of this Agreement.
21. **No Third Party Beneficiaries; Relationship of the Parties:** There are no third party beneficiaries to this Agreement. Champion and Buyer agree that nothing in this Agreement shall be construed to constitute or imply a joint venture, partnership or association or the creation or existence of any fiduciary duty, or similar obligation or liability between Champion and the Buyer. Champion will not provide, and nothing herein will be construed as the provision of, advice regarding the value or the advisability of trading in "commodity interests" which would cause Champion or an affiliate to be considered a commodity trading advisor under the Commodity Exchange Act, 7 U.S.C. § 1-25, et seq., as amended.
22. **Severability:** If any provision of this Agreement is held to be invalid, its invalidity shall not affect the validity of any other provision of the Agreement.
23. **Taxes:** Buyer will be responsible for, pay, and indemnify Champion for all Taxes hereunder, whether imposed on Buyer or Champion. Champion may collect such Taxes from Buyer by increasing invoice charges for the amount of such Taxes. Buyer will provide all requested exemption certificates and information and until provided, Champion will not recognize any exemption. "Taxes" shall mean without limitation, all ad valorem, property, occupation, utility, gross receipts, sales, use, franchise, assessment fees, excise and other taxes, governmental charges, emission allowance costs,

licenses, permits and assessments, and any such similar taxes other than taxes based on net income or net worth.

24. **UCC:** Except as otherwise provided in the Agreement, the Uniform Commercial Code ("UCC") or such similar collection of statutory provisions as may have been adopted and are in effect in the state of Illinois shall apply to this Agreement and electricity shall be a "good" for purposes of the UCC.
25. **Representations and Warranties:** Each Party represents to the other that: (a) it is validly existing and in good standing in the jurisdiction of its formation; (b) it has not filed, does not plan to file, or had any bankruptcy proceeding filed against it; (c) execution of this Agreement has been duly authorized and is a valid and enforceable obligation; and (d) it is not a party to or subject to any commitment that may restrict or interfere with the delivery of electricity under this Agreement. Champion represents and warrants that it will comply with all local, state and federal laws applicable to alternative retail electric suppliers. In addition, Buyer represents to Champion during the Term that: (a) it intends to operate its business in substantially the same manner as it has in the previous 12 months and that the Contract Quantities and Current PLC Values reflected in Exhibit "A" reasonably reflect Buyer's anticipated consumption; (b) it understands Champion is relying on this representation to purchase products and services (in quantities that closely resemble Buyer's consumption pattern of the previous 12 months) from third parties to serve Buyer's Energy requirements for the Term of this Agreement; (c) it understands that if it operates its meter(s) inconsistent with its usual and customary manner it may cause material detrimental financial impact to Champion and that Champion will pass along the impact of such changed consumption in accordance with Paragraph 5; (d) the information provided concerning its account(s) and meter(s) is true and correct; (e) any transactions entered into by Buyer related to this Agreement are understood by Buyer and made at Buyer's sole election in the exercise of independent judgment and Buyer assumes any risk associated with them; and (f) it is purchasing these services for its commercial business, strictly for its own use, and its aggregated usage during any twelve (12)-month period is, or will be, greater than 15,000 kWh. If any of the foregoing representations or warranties turns out to be false or the Buyer's consumption and/or PLC values specified in Exhibit "A" materially change as compared to past practice, or the supply group assigned by ComEd to Buyer's account(s) changes, Champion may, in addition to other Remedies provided for herein, adjust the Contract Price to account for the adverse change, but only to the extent that the adjustments are equal to the actual incremental costs resulting from the misinformation.

26. **Notices.** Notices required or permitted to be given under this Agreement will be in writing. The addresses of the Parties are as follows:

	Buyer Notices		Champion Notices
	Contract Issues	Invoicing	
Attention:			Illinois Retail Manager
Address:			13831 NW Freeway Suite 250
City, State, Zip:			Houston, TX 77040
Telephone:			(281) 653-5090
Facsimile			(281) 653-1810
E-mail:			infoIL@ championenergyservices.com
Federal Tax ID#:			30-0394593
Invoice Delivery Method:		<input type="checkbox"/> Email <input type="checkbox"/> Mail	

This agreement constitutes the entire agreement between the parties, notwithstanding any oral statements or representations of any brokers or sales representatives. Any amendment, change or modification of this contract must be in writing and signed by both parties.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement effective as of the Effective Date. This Agreement will not become effective as to either Party unless and until executed by both Parties.

"Buyer"
VILLAGE OF DOWNERS GROVE

"Champion"
CHAMPION ENERGY, LLC

By: _____
[Signature]

By: _____
[Signature]

Name:

Name:

Title:

Title: Authorized Signatory

Date:

Date:



Buyer Initials

Champion Initials

EXHIBITS TO COMMERCIAL ENERGY SALES AGREEMENT

Buyer: Village of Downers Grove Effective Date: April 30, 2010

EXHIBIT "A"

Start Date: Jun 2010 Contract Price: \$0.05750/kWh
 End Date: Jun 2013 Consumption Variance Allowance: ± 100%
 Duration: 36 months

Contract Quantity: The monthly quantities shown below.

Current PLC Values*:

	kWh	Billing kW	Peak kW
Jan	141,870	369.15	369.15
Feb	120,914	411.23	411.23
Mar	147,338	497.55	497.55
Apr	112,388	439.87	439.87
May	84,126	413.42	413.42
Jun	76,180	180.80	180.80
Jul	77,122	400.02	400.02
Aug	70,467	388.28	388.28
Sep	65,755	414.03	414.03
Oct	72,601	408.40	408.40
Nov	89,380	442.12	442.12
Dec	129,194	406.91	406.91
Total	1,187,333		

	kW
Capacity PLC:	118.84
Network Svc PLC:	106.56

* as determined by ComEd and subject to change during the Term.

Contract Quantity

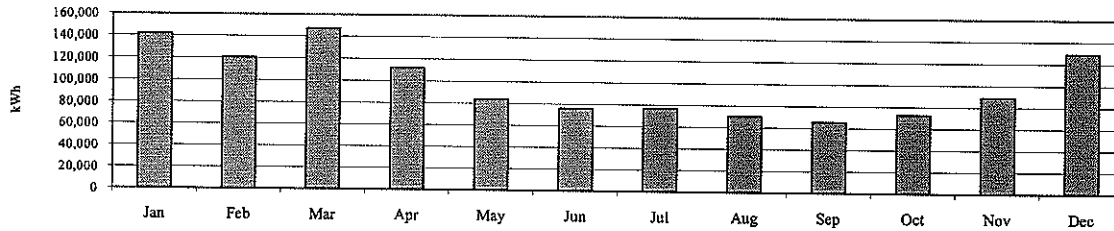


EXHIBIT "B"

PJM Costs (included in Contract Price)

- Spot Market Energy
- Transmission Congestion
- Transmission & Distribution Losses
- Inadvertent Interchange
- Regulation
- Synchronized Reserve
- Operating Reserves
- Synchronous Condensing
- Reactive Services
- Meter Correction
- Real-time Economic Load Response
- PJM Scheduling, Control & Dispatch
- Transmission Owner Scheduling, Control & Dispatch
- Reactive Supply & Voltage Control
- Black Start Service
- NERC & RFC charges
- Network Integration Transmission Service
- Expansion and RTO Start-up Cost Recovery
- Locational Reliability (a.k.a. Capacity)
- Transmission Enhancement Charges
- Renewable Portfolio Standards

EXHIBIT "C"

Pass-through Charges (at cost):

- All applicable Taxes

EXHIBIT "D"

Delivery Point(s)

No.	ACCOUNT NO.	METER NO.	SERVICE ADDRESS	CITY, STATE, ZIP
1	0063130094	095053662		
2	0237084061	094436132		
3	0249158003	141237388		
4	0351143087	140384934		
5	0384014000	117926014		
6	0399047048	093756098		
7	0523134063	141503633		
8	0715060138	141301488		
9	0855051035	117793401		
10	1365059017	141266547		
11	1537047029	140069744		
12	1569015006	078981783		
13	1683140106	140384909		
14	1731125046	140384910		
15	2379165118	094436003		
16	2565134038	140384931		
17	2739126064	141238960		
18	3003102040	117855960		
19	3244105050	140160521		
20	6770399003	999910433		

For Emergencies, Outages and Equipment Service, contact ComEd at 1-800-EDISON (1-800-334-7661).



Buyer Initials

Champion Initials

EXHIBITS TO COMMERCIAL ENERGY SALES AGREEMENT

Buyer: Village of Downers Grove

Contract Date: April 30, 2010

EXHIBIT "D" - CONTINUED

Delivery Point(s)

No.	ACCOUNT NO.	METER NO.	SERVICE ADDRESS	CITY, STATE, ZIP
21	6933538013	094965086		
22	6933565001	084393340		
23	6936554037	140238930		
24	7104203024	072966866		
25	7104205046	117928808		
26	8361372007	140037458		
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For Emergencies, Outages and Equipment Service, contact ComEd at 1-800-EDISON (1-800-334-7661).

THIS LETTER OF AGENCY IS REQUIRED BY THE STATE OF ILLINOIS (ILLINOIS LAW 815 ILCS 505/2EE) AND PROTECTS YOU FROM BEING SWITCHED WITHOUT APPROPRIATE AUTHORIZATION. CHAMPION WILL KEEP A COPY OF THIS LETTER ON FILE FOR YOUR ACCOUNT.

Letter of Agency

By this letter, Customer authorizes Commonwealth Edison Company ("ComEd") to change Customer's electric service provider to Champion Energy, LLC ("Champion"). The following information is provided to ComEd to facilitate Customer's request regarding the foregoing switch:

Customer Billing Name: Village of Downers Grove

Customer Billing Address: _____

Customer Account Number(s): (see attachment)

Customer and Champion have entered into a separate, mutually satisfactory electric service agreement providing the specific terms and conditions under which service will be provided by Champion. Customer permits and hereby authorizes ComEd to provide Customer's billing and usage data to Champion. ComEd may charge a fee for changing your electric service provider to Champion. Champion will pay this fee for Customer.

Letter of Agency is signed and submitted:

By: _____ Date: April 30, 2010

Attachment to Letter of Agency

Customer Billing Name: Village of Downers Grove

Customer Account Number(s):

1	<u>0063130094</u>	36	_____
2	<u>0237084061</u>	37	_____
3	<u>0249158003</u>	38	_____
4	<u>0351143087</u>	39	_____
5	<u>0384014000</u>	40	_____
6	<u>0399047048</u>	41	_____
7	<u>0523134063</u>	42	_____
8	<u>0715060138</u>	43	_____
9	<u>0855051035</u>	44	_____
10	<u>1365059017</u>	45	_____
11	<u>1537047029</u>	46	_____
12	<u>1569015006</u>	47	_____
13	<u>1683140106</u>	48	_____
14	<u>1731125046</u>	49	_____
15	<u>2379165118</u>	50	_____
16	<u>2565134038</u>	51	_____
17	<u>2739126064</u>	52	_____
18	<u>3003102040</u>	53	_____
19	<u>3244105050</u>	54	_____
20	<u>6770399003</u>	55	_____
21	<u>6933538013</u>	56	_____
22	<u>6933565001</u>	57	_____
23	<u>6936554037</u>	58	_____
24	<u>7104203024</u>	59	_____
25	<u>7104205046</u>	60	_____
26	<u>8361372007</u>	61	_____
27	_____	62	_____
28	_____	63	_____
29	_____	64	_____
30	_____	65	_____
31	_____	66	_____
32	_____	67	_____
33	_____	68	_____
34	_____	69	_____
35	_____	70	_____