

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MAY 1, 2012 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Intergovernmental Agreement with the Village of Westmont for the Joint Proposal and Contracting Process for Electrical Aggregation	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

SYNOPSIS

A resolution authorizing the execution of an Intergovernmental Agreement with the Village of Westmont for the Proposal and Contracting Process of Electrical Aggregation has been prepared.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 include *Exceptional Municipal Services*.

FISCAL IMPACT

There is no fiscal impact to the Village. The Village of Westmont has entered into a professional services agreement with Belden Energy Solutions which allows the Village to participate at a cost of \$10,000. This fee will be included in the electrical supply rate and will be equivalent to approximately \$0.60 per customer per year.

RECOMMENDATION

Approval on the May 1, 2012 consent agenda.

BACKGROUND

The Villages of Downers Grove and Westmont passed referenda allowing for the operation of opt-out electrical aggregation programs. Under State law, municipalities may enter into intergovernmental agreements for the purpose of aggregation. In an effort to achieve savings for residents by combining the electrical loads of each municipality, staff from Downers Grove and Westmont have coordinated the development of an intergovernmental agreement that will allow the villages to operate a joint Request for Proposals (RFP) and contracting process.

The proposed Intergovernmental Agreement includes the following key terms:

- Each party will operate its own Electric Aggregation Program but will combine the RFP and contracting process
- The terms of the agreement shall be concurrent with the term of the power supply agreement and shall automatically renew for an additional one year period unless it is terminated
- The villages will share information and other materials necessary to complete the RFP process
- Downers Grove will coordinate the joint RFP process and the villages will agree on technical specifications and requirements for the supply contract
- The Village of Westmont has entered into an agreement with Belden Energy Solutions that provides that the cost of consulting services shall not exceed \$10,000 per municipality

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BY, BETWEEN AND AMONG THE VILLAGE OF
DOWNERS GROVE AND THE VILLAGE OF WESTMONT
CONCERNING ELECTRIC AGGREGATION**

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 Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove ("Downers Grove") and the Village of Westmont ("Westmont"), concerning electric aggregation, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor, 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 all attached exhibits and necessary documentation, 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 all exhibits.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are 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

**INTERGOVERNMENTAL AGREEMENT
BY, BETWEEN AND AMONG THE VILLAGE OF DOWNERS GROVE AND THE VILLAGE OF WESTMONT
CONCERNING ELECTRIC AGGREGATION**

THIS INTERGOVERNMENTAL AGREEMENT ("**Agreement**") is made and entered into as of the ___ day of _____, 2012, by, between, and among the **VILLAGE OF DOWNERS GROVE**, an Illinois municipal corporation ("Downers Grove") and the **VILLAGE OF WESTMONT** an Illinois municipal corporation, ("Westmont"), (collectively, the "**Parties**").

WITNESSETH:

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

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

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

WHEREAS, although each Party will operate a separate Electric Aggregation Program for its residents, the Parties have individually and collectively determined that combining the request for proposal (RFP) process and contracting process to obtain the supply of electric power for their Electric Aggregation Programs could provide potential savings through a joint RFP process ("**Joint RFP Process**"); and

WHEREAS, the Parties desire to establish an Intergovernmental Agreement by, between, and among Downers Grove and Westmont to facilitate joint action and intergovernmental cooperation for the Joint RFP Process; and

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

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

WHEREAS, the Parties have agreed to participate equally in paying for the hiring of a consultant to assist in the Joint RFP Process; and

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

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

SECTION 1. RECITALS.

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

SECTION 2. PURPOSE.

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

SECTION 3. TERM; OTHER PARTIES.

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

SECTION 4. GENERAL COOPERATION.

- A. **Cooperation.** The Parties acknowledge and agree to cooperate with each other in furtherance of the purposes, goals, and objectives of the Agreement. Cooperation required by this Agreement specifically includes, but is not limited to, the sharing and

joint utilization by and among the Parties of information and other materials possessed or developed by the Parties, either individually or collectively, and necessary to investigate, identify, and otherwise document the Joint RFP Process.

- B. **Independent Operation.** Notwithstanding the provisions of Section 4.A of this Agreement, the Parties acknowledge and agree that the Parties are operating separate Electric Aggregation Programs for each community pursuant to their own plans of governance, and that the Joint RFP Process does not create any responsibility or obligation for any Party to administer or operate any aspect of the Electric Aggregation Program of any other Party, nor does it obligate either Party to enter into a joint agreement for the supply of energy.

SECTION 5. CONTRACTING PROCESS; PAYMENTS AND EXPENSES.

- A. **Official Coordinator.** For the Initial Term of this Agreement Downers Grove shall prepare and submit contract documents and bid specifications for the Joint RFP Process, and will serve as the Official Coordinator for the Joint RFP Process.

- B. **Procedure for Developing Request for Proposals.** At such time as the Parties desire to solicit RFPs from contractors for the Joint RFP Process, the Parties shall agree to follow the following process:

- i. The Parties shall meet and confer and agree upon a set of technical specifications and requirements ("***Technical Requirements***") and RFP and contract documents ("***Contract Package***") for the Joint RFP Process. The contract documents shall include a contract to be executed by and between the contractor and each Party for the provision of electrical power to that Party pursuant to the Joint RFP Process ("***Power Supply Agreement***").

The Contract Package shall, without limitation, require contractors to submit pricing to supply electric power to all Parties jointly, provided that the pricing structure must allow a Party or Parties to proceed individually at the joint price, or a substantially similar price.

- ii. All Parties shall have an adequate opportunity to review and comment on the Technical Requirements and Contract Package, and shall provide such comments to the Official Coordinator. Revised drafts of the Technical Requirements and Contract Package shall be prepared and reviewed by the Parties until such time as the Parties have approved these documents.
- iii. When all Parties are satisfied with the Technical Requirements and Contract Package, the Official Coordinator may issue these documents to prospective contractors or suppliers to solicit proposals, and shall establish a deadline for the submission of proposals.
- iv. During the time following the issuance of the Technical Requirements and Contract Package, and prior to the deadline for submission of proposals, the Official Coordinator shall issue such addenda to the prospective contractors as

may be necessary to respond to the inquiries of such prospective contractors or to clarify the Technical Requirements and Contract Package. The Official Coordinator shall consult with the other Parties prior to issuing any such addenda. The Parties shall refer any inquiries or issues received or identified regarding the Technical Requirements and Contract Package to the Official Coordinator for possible inclusion in such an addendum.

- v. Following receipt of the proposals, the Official Coordinator shall provide copies of the proposals to each of the Parties. The Party Representatives shall examine and review the proposals and shall confer to discuss the proposals and to recommend to the Parties which contractor shall be selected.
- vi. The Village Managers or designee of each Party is hereby authorized to accept the lowest and most responsible bid after opening of the proposals.
- vii. For each Party that is going to move forward with the Power Supply Agreement, the corporate authorities or authorized designee of that Party must approve the award of the Power Supply Agreement.

C. Administration by the Parties. After the completion of the Joint RFP Process and the award by each Party of its own Power Supply Agreement with the contractor, each Party shall be responsible to manage its own Power Supply Agreement and Electric Aggregation Program.

D. Expenses. Except as set forth in Section 5.E. herein, the Parties acknowledge and agree to use their respective staffs and resources, at no cost to the other Parties.

E. Costs of this Agreement. The Parties agree to participate equally in paying for any Consultant's costs incurred. It is expressly understood that Westmont has already entered into an agreement with Belden Energy Solutions, Inc. that provides that each Party's costs for such consulting services shall not exceed \$10,000.00 per Party per year of the Power Supply Agreement.

SECTION 6. WITHDRAWAL; TERMINATION.

A. Right to Withdraw. Any Party may withdraw from this Agreement prior to going out to bid on the Joint Power Supply Bid in the Initial Term or any Subsequent Term, provided that the withdrawing Party must provide notice in writing to the other Parties of its withdrawal no later than 7 days before issuance of the bid.

B. Dissolution and Termination. This Agreement shall be dissolved and terminated (i) upon the written agreement of all the Parties hereto; or (ii) upon the event of only one Party remaining as a party to this Agreement.

SECTION 7. GENERAL PROVISIONS.

A. Notices. All notices and other materials shall be delivered to the Official Coordinator. All notices required to be delivered to any Parties pursuant to this Agreement shall be in

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

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

Downers Grove:	Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 Attn: Village Manager	With a copy to:	Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 Attn: Village Attorney
Westmont:	Village of Westmont 31 W Quincy Street Westmont, IL 60559 Attn: Village Manager	With a copy to:	

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

resolutions duly adopted and approved by the Party's corporate authorities. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved by the corporate authorities of each Party and properly executed in accordance with all applicable law.

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

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

ATTEST:

By: _____
Village Clerk

VILLAGE OF Downers Grove

By: _____
Mayor

ATTEST:

By: _____
Village Clerk

VILLAGE OF Westmont

By: _____
Mayor