

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL MEETING  
JUNE 19, 2012 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
Resolution Confirming the Execution of the Master Supply Agreement for Electrical Aggregation	✓ Resolution Ordinance Motion Discussion Only	Allison Deitch Management Analyst

**SYNOPSIS**

A resolution has been prepared to confirm the execution of the Master Power Supply Agreement with FirstEnergy Solutions Corp.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011 to 2018 include *Exceptional Municipal Services. Evaluating Options for Electrical Aggregation* is a High Priority Action Item for 2012.

**FISCAL IMPACT**

There is no direct cost to the Village for the electrical aggregation program. Downers Grove residents and eligible businesses will see savings of approximately 42% over the ComEd supply rates.

**RECOMMENDATION**

Approval on the June 19, 2012 Consent Agenda

**BACKGROUND**

On June 13, 2012, staff, working with the Village of Westmont and the Villages' consultant, Belden Energy Solutions, received best and final pricing from the four pre-qualified suppliers for electrical aggregation. Based on the parameters of the Village Council's motion on June 5, 2012 authorizing the Village Manager to award the contract, the contract was awarded to FirstEnergy Solutions, Corp. (FES).

The contract was awarded to FirstEnergy based on their lowest bid of 4.75 cents per kilowatt hour. The rate will be fixed for 24 months. There will be no early termination fee. Staff is working with Belden Energy Solutions and FirstEnergy to achieve an August implementation. Opt out notices will be delivered to eligible customers shortly. Staff will use all existing means of communication to educate residents prior to the delivery of the opt out letters and throughout the implementation process.

Based on the pricing, the typical residential customer would achieve annual savings of approximately \$369 (see table below). Actual savings would be based on the customer's annual electricity usage.

**Estimated Annual Savings for a Typical Residence (10,350 kilowatt hours per year)**

<b>Type of Supply</b>	<b>Estimated Rate</b>	<b>Estimated Annual Cost</b>	<b>Estimated Annual Savings to Rate to Compare</b>
Com Ed Rate	8.32	\$861	NA
First Energy Rate	4.75	\$492	\$369

**ATTACHMENTS**

Master Supply Agreement

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION CONFIRMING EXECUTION OF A  
MASTER POWER SUPPLY  
AGREEMENT BY AND BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND FIRSTENERGY SOLUTIONS CORP.  
TO PROVIDE FULL-REQUIREMENTS ELECTRICITY SUPPLY AND RELATED  
SERVICES FOR THE VILLAGE'S ELECTRIC AGGREGATION PROGRAM**

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 ("Municipality") and FirstEnergy Solutions Corp. ("Supplier"), for electricity supply and program implementation services, 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 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.

3. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

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

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

**MASTER POWER SUPPLY  
AGREEMENT BY AND BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND FIRSTENERGY SOLUTIONS CORP.  
TO PROVIDE FULL-REQUIREMENTS ELECTRICITY SUPPLY AND RELATED  
SERVICES FOR THE VILLAGE'S ELECTRIC AGGREGATION PROGRAM**

This Agreement ("Agreement"), is entered into as of this 13<sup>th</sup> day of June, 2012 ("Effective Date") between the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation ("Municipality") and FIRSTENERGY SOLUTIONS CORP. ("Supplier") (each a "Party" and collectively, the "Parties").

**RECITALS**

A. The Municipality has established an Electricity Aggregation Program ("Program") pursuant to an aggregation ordinance, adopted on May 15, 2012 as Ordinance #5263, ("Aggregation Ordinance") and the aggregation statute, 20 ILCS 3855/1-92, ("Aggregation Statute") and will conduct the Program as an opt-out program pursuant to the Aggregation Ordinance and the Aggregation Statute.

B. The Supplier has been selected by the Municipality pursuant to its response to the RFP, which RFP including the RFP response and RFP Package are incorporated into this Agreement as Exhibit A ("RFP Package").

C. The purpose of this Agreement is for the Supplier to provide the Full-Requirements Electricity Supply Services and the Program Implementation Services, as defined in Article 2 below, (collectively, the "Services") to all Eligible Customers, as defined in Article 2 below, who choose not to opt out of the Program throughout the Term of this Agreement at the Price set forth in Exhibit B.

D. Supplier acknowledges and agrees that it has all certifications, authorizations, qualifications, and approvals necessary pursuant to the Requirements of Law, as defined in Article 2 below, to sell Full-Requirements Electricity Supply to Eligible Customers pursuant to this Agreement, including without limitation that:

- a. Supplier is certified by the Illinois Commerce Commission as a Retail Electric Supplier, as defined in Article 2 below, and is authorized to sell Full-Requirements Electricity Supply to customers in the State of Illinois utilizing the existing transmission and distribution systems of ComEd, as defined in Article 2 below, within the service areas of ComEd;
- b. Supplier is currently registered with ComEd to serve residential and small commercial customers under Rate RESS - Retail Electric Supplier Service with Rider PORCB - Purchase of Receivables and Consolidated Billing;
- c. Supplier has at least three (3) years continuous experience as a Retail Electric Supplier and has provided Full-Requirements Electricity Supply to at least twenty five thousand (25,000) residential and/or commercial customers;
- d. Supplier acknowledges and agrees that it will provide the Services, as defined in Article 2 below, including without limitation Full-Requirements Electricity Supply to

all Participating Customers, as defined in Article 2 below, pursuant to the RFP Package, the RFP Response, this Agreement, and the Requirements of Law; and,

- e. The Municipality desires to enter into this Agreement with Supplier for the provision by the Supplier of Full-Requirements Electricity Supply to all Eligible Customers pursuant to the Program.

## **AGREEMENT**

In consideration of the mutual covenants and agreements contained herein, the Municipality and the Supplier do hereby agree as follows:

### **ARTICLE 1 RECITALS**

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

### **ARTICLE 2 DEFINITIONS**

1. "Aggregate" means the total number of Eligible Customers that are within the jurisdictional boundaries of the Municipality.
2. "RFP Package" means the Request for Proposals, including the RFP, Terms and Conditions, Detailed Specifications, Proposers Response to the RFP, Master Supply Agreement and the Plan of Operation and Governance all attached and incorporated herein as Exhibit A.
3. "Billing Services" means those services describe in Section 4.4 of this Agreement, including all subsections of Section 4.4.
5. "ComEd" means Commonwealth Edison.
6. "Compliance Services" means those services identified in Section 4.5 of this Agreement.
7. "Confidential Information" is defined in Section 9.1 of this Agreement.
8. "Customer Information" means that certain information that the Electric Utility is required to provide to the corporate authorities of the Municipality pursuant to the Aggregation Statute, including without limitation those names and addresses and Electric Utility account numbers of residential and small commercial retail customers in the Aggregate area that are reflected in the Electric Utility's records at the time of the request.
9. "Data" is defined in Section 9.2 of this Agreement.
10. "Electric Utility" means ComEd.
11. "Eligible Customers" mean residential and small commercial electricity customers receiving Full-Requirements Electricity Supply within the Municipality who are eligible to participate in the Program pursuant to the Aggregation Statute and the Requirements of Law.

12. "Energy" means generated electricity.
13. "Enrollment Services" means those services described in Section 4.3 of this Agreement.
14. "Extended Term" is defined in Section 5.1 of this Agreement.
15. "Force Majeure Event" is defined in Section 7.1 of this Agreement.
16. "Full-Requirements Electricity Supply" means all services or charges necessary to provide a continuous supply of electricity to all Participating Customers, including, without limitation, Energy, capacity, losses, renewable portfolio standard ("RPS") charges, imbalances, load factor adjustments, transmission costs, congestion charges, marginal losses, ancillary services, taxes applicable only to the Supplier, and any additional necessary services or charges.
17. "Full-Requirements Electricity Supply Services" means those portions of the Services described in Section 4.1 of this Agreement.
18. "ICC" means the Illinois Commerce Commission.
19. "Independent System Operator" or "ISO" means that certain independent system operator for the Electric Utility established pursuant to Section 16-126 of the Public Utilities Act, 220 ILCS 5116-626.
20. "Power Supply Proposal" means the RFP process to be conducted by Belden Energy Solutions Inc. on behalf of the Municipality(ies) to identify the Supplier.
21. "New Customers" are defined in Section 4.3.9 of this Agreement.
22. "Opt-Out Notice" means the notices described in Section 4.2.1.1 of this Agreement and provided to Eligible Customers informing them of their ability to opt-out of the Program pursuant to the Requirements of Law.
23. "Opt-Out Period" means the time prior to the implementation of the Program during which Eligible Customers may choose not to participate in the Program pursuant to the Requirements of Law.
24. "Opt-Out Process" is defined in Section 4.2.1 of this Agreement.
25. "Participating Customers" means those Eligible Customers who do not opt out of the Program and are not Special Billing Customers, and New Customers.
26. "Plan of Operation and Governance" or "POG" means that certain Plan of Operation and Governance approved by Downers Grove on May 15, 2012 pursuant to the Aggregation Statute.
27. "Point of Delivery" means the point specified by the Electric Utility at which the Supplier must deliver the Full-Requirements Electricity Supply to the Electric Utility for distribution to Participating Customers.
28. "Price" means the fixed price expressed in cents per kilowatt hour at which the Supplier will provide the Services as set forth in Exhibit B to this Agreement.

29. "Program" means the electricity aggregation program operated by the Municipality in accordance with the Aggregation Statute and authorized by the Aggregation Ordinance, to aggregate residential and small commercial retail electrical loads located within the corporate limits of the Municipality for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Full-Requirements Electricity Supply and related Services.
30. "Program Implementation Services" means those portions of the Services described in Section 4.2 of this Agreement, including all subsections of Section 4.2.
31. "Requirements of Law" means the Aggregation Ordinance, the Aggregation Statute, the Plan of Governance, the rules and regulations of the ICC, the rules, regulations and tariffs applicable to the Electric Utility and the Independent System Operator, and all other federal, State, and local laws, orders, rules, and regulations.
32. "Retail Electric Supplier" or "RES" means an "alternative retail electric supplier" as that term is defined in Section 16-102 of the Public Utilities Act, 220 ILLS 5116-102.
33. "Services" means the Full-Requirements Electricity Supply Services, Program Implementation Services, Enrollment Services, Billing Services, and Compliance Services provided in Article 4 of this Agreement.
34. "Special Billing Customers" are defined in Section 4.3.8 of this Agreement.
35. "Supplier" means or the lawful successor, transferee, or assignee thereof.
36. "Tariffed Service" means the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 at the rates established in ComEd's "Price to Compare" for the applicable rate class, as posted on the ICC website, which includes ComEd's electricity supply charge plus ComEd's transmission series charge, but does not include ComEd's purchased electricity adjustment.
37. "Term" is defined in Section 5.1 of this Agreement.
38. "Withdrawing Customer" is defined in Section 4.3.6 of this Agreement.

### **ARTICLE 3 PROGRAM RESPONSIBILITIES**

#### **3.1 Municipality Responsibilities.**

3.1.1 Customer Information. The Municipality shall, with the assistance of the Supplier, pursuant to the Requirements of Law, obtain the Customer Information from ComEd.

3.1.2 Notices and Customer Information from ComEd. The Municipality shall promptly forward to Supplier the Customer Information received from ComEd and each Party will promptly provide to the other Party any notices received by that Party from ComEd concerning the accounts of Eligible or Participating Customers.

3.1.3 Submittals to ComEd. The Municipality shall, with the assistance of Supplier, submit to ComEd: (a) the "Government Authority Aggregation Form," (b) a list of Eligible

Customers who are not Participating Customers because they have elected to opt-out of the Program, and (c) a list of all Participating Customers.

3.1.4 No Municipality Obligations to Provide Services. The Parties acknowledge and agree that the Municipality is not responsible to provide, and this Agreement shall not be construed to create any responsibility for the Municipality to provide, the Services to any person or entity, including without limitation the Supplier, the Electric Utility, the ISO, Eligible Customers, Special Billing Customers, or Participating Customers. The Supplier acknowledges and agrees that the Municipality is not responsible to provide, and shall not be liable to the Supplier or any Eligible Customer for any failure to provide, any Services pursuant to this Agreement.

3.1.5 No Municipality Financial Responsibility. The Parties acknowledge and agree that this Agreement does not impose or create, and shall not be construed to create, any financial obligation of the Municipality to any other person, entity, or any third party beneficiary to this Agreement, including without limitation the Supplier, the Electric Utility, the ISO, Eligible Customers, Special Billing Customers, or Participating Customers.

### 3.2 Supplier Obligations.

3.2.1 Provision of Services. The Supplier shall provide all of the Services described in Article 4 of this Agreement throughout the Term, including but not limited to the provision of sufficient Full-Requirements Electricity Supply to allow the Electric Utility to deliver and distribute uninterrupted electric service to all Participating Customers.

3.2.2 Compliance with the Requirements of Law. Supplier shall comply with all requirements of Law.

3.3 Supplier Press Releases. The Supplier may issue press releases concerning the Program that are approved in advance by the Municipality prior to issuance.

3.4 Supplier represents and warrants that all information provided to Municipality or any of its agents relating to this Agreement in any way shall be true and accurate in all respects at all times.

## **ARTICLE 4 SUPPLIER SERVICES**

4.1 Full Requirements Electricity Supply: The Supplier must supply the following Full-Requirements Electricity Supply Services as provided in this Section 4.1.

### 4.1.1 Scheduling, Transmission and Delivery of Full-Requirements Electricity Supply.

4.1.1.1 Generally. The Supplier shall take all actions necessary to arrange for the scheduling, transmission, and delivery of Full-Requirements Electricity Supply to the Electric Utility for distribution to all Participating Customers.

4.1.1.2 Scheduling. Supplier shall schedule the Full-Requirements Electricity Supply for distribution as required by the ISO and the Electric Utility.

4.1.1.3 Distribution and Transmission Rights. Supplier shall obtain all necessary distribution and transmission rights necessary for the delivery of the Full-Requirements Electricity Supply to the Electric Utility hereunder.

4.1.1.4 Transmission and Delivery to Electric Utility.

4.1.1.4.1 Transmission and Delivery. Supplier shall cause to be transmitted, and deliver to the Electric Utility at the Delivery Point, sufficient Energy to provide continuous Full-Requirements Electricity Supply to all Participating Customers. The Municipality acknowledges that the Electric Utility, and not the Supplier, is responsible for the distribution of the Full-Requirements Electricity Supply to the Participating Customers after delivery by the Supplier to the Delivery Point, and that Supplier does not take responsibility for the distribution of the Full-Requirements Electricity Supply to Participating Customers after the Supplier provides Full-Requirements Electricity Supply to the Point of Delivery.

4.1.1.4.2 Failure of Delivery. Supplier acknowledges and agrees that if the Supplier fails to provide the Full Requirements Electricity Supply to the Participating Customers pursuant to this Agreement, including without limitation if Supplier fails to schedule all or part of the Full-Requirements Electricity Supply for any Participating Customer, Supplier shall be solely responsible for any additional costs, charges, or fees incurred because of such failure, and shall not pass through any such additional costs, charges, or fees to any other person or entity, including but not limited to the Municipality or Participating Customers.

4.1.2 Pricing. Except as provided in Section 4.1.3 of this Agreement, the Supplier shall receive the Price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation. The Municipality acknowledges that the Price does not include sales or other consumer-based taxes applicable to Participating Customers or other taxes that are not applicable to the Supplier.

4.1.3 Pricing Guarantee. If the rates for Tariffed Service to a particular rate class are set below the Price during the Term of this Agreement, Supplier shall, within thirty (30) business days from the date on which the rates for Tariffed Service are set below the Price during the Term of this Agreement, either provide the Services to Participating Customers at a price equal to the rate for Tariffed Service, or return all Participating Customers to the Electric Utility, without damages or early termination fees to either Party. Notwithstanding the foregoing, termination under this Section 4.1.3 may be avoided if the Municipality determines that the Aggregation Program should remain in place at the Price without the need to match. In such an event, the Parties shall enter into a written agreement and the Municipality shall not waive any rights set forth herein by allowing the Price to remain in place without the need to match unless the Municipality specifically agrees in writing.

4.2 Program Implementation Services. The Supplier must supply the following Program Implementation Services as provided in this Section 4.2:

4.2.1 Opt-Out Process. Supplier, at its sole cost and expense, shall, with the assistance of the Municipality, administer the process by which Eligible Customers are provided with the opportunity to opt-out of the Program prior to its implementation (the "Opt-Out Process"), including, but not limited to, the following:



4.2.1.1 Opt-Out Notices. Supplier, at its own expense, shall be fully responsible to prepare and mail form Opt-Out Notices to all Eligible Customers as required pursuant to the Requirements of Law. Opt-Out Notices must include all information required pursuant to the Requirements of Law, including without limitation including the terms and conditions of participation in the Program, the cost to the Eligible Customers of Full Requirements Electricity Supply under the Program, the methods by which Eligible Customers may opt out of the Program, and the length of the Opt-Out Period. The Opt-Out Notices must prominently include the toll-free telephone number and secure website described Section 4.2.1.3. The form and content of the Opt-Out Notices shall be approved by the Municipality prior to mailing by the Supplier. In addition to the Opt-Out Notices, the Supplier shall provide Participating Customers with terms and conditions for the provision of Full Requirements Electric Supply to those Participating Customers, which terms and conditions shall comply with and accurately reflect all of the requirements of this Agreement and the Requirements of Law.

4.2.1.2 Notices to Special Billing Customers. The Municipality shall provide notices to Special Billing Customers concerning the Program, the Price, the rates charged to Special Billing Customers under their existing service, and the opportunity for Special Billing Customers to opt in to the Program as provided in Section 4.3.8 of this Agreement.

4.2.1.3 Toll Free Number and Secure Website. In addition to receiving completed Opt-Out Notices from Eligible Customers by mail, the Supplier shall, at its own expense, provide, operate, and maintain a toll-free number and secure website for the use of Eligible Customers to opt out of the Program. The toll-free number shall be operational during normal business hours and the secure website shall be operational twenty four (24) hours a day, seven (7) days a week during the Opt-Out Period. The Opt-Out Notices shall prominently include both the toll-free number and the internet address of the secure website. Supplier shall support Spanish speaking residents and customers with disabilities to the commercially reasonable satisfaction of the Municipality.

4.2.1.4 Reporting. During the Opt-Out Period, Supplier shall be responsible for receipt of all Opt-Out Notices. Supplier shall assemble, track, and report to the Municipality concerning the delivery and receipt of all Opt-Out Notices to and from Eligible Customers, including without limitation providing the Municipality with complete information concerning all Eligible Customers who choose to opt-out of the Program whether by mail, telephone, or the secure website.

4.2.2 Required Disclosures. Supplier shall provide Eligible Customers with all information required to be disclosed to Eligible Customers concerning Full-Requirements Electricity Supply and the Program pursuant to the Requirements of Law, including without limitation all information required to be included in the Opt-Out Notices.

4.3 Enrollment Services. The Supplier shall supply the following Enrollment Services:

4.3.1 Record of Participating Customers. Following the completion of the Opt-Out Period, the Supplier shall compile a complete list of all Participating Customers and those

Eligible Customers who have opted out of the Program, and shall ensure that no Eligible Customers who have opted out are enrolled in the Program.

4.3.2 Enrollment. Upon completion of the Opt-Out Process and the identification of all Eligible Customers who have opted out of the Program, the Supplier shall, at its sole cost and expense, take all actions necessary to enroll Participating Customers in the Program pursuant to the Requirements of Law.

4.3.3 Term of Enrollment. Participating Customers who do not opt out of the Program shall be enrolled in the Program by the Supplier, and shall remain enrolled in the Program until the end of the Term, unless the Agreement is terminated pursuant to its terms or the Participating Customer withdraws from the Program pursuant to Section 4.3.6 of this Agreement

4.3.4 Direct Access Service Request. The Supplier shall submit a direct access service request to ComEd for each Participating Customer in compliance with the "standard switching" subsection of Rate RDS -Retail Delivery Service, in order to allow Full Requirements Electricity Supply to commence following the Municipality's implementation schedule.

4.3.5 Payment of Switching Fees. The Supplier shall reimburse Participating Customers for any switching fee imposed by the Electric Utility related to the enrollment of a Participating Customer in the Program upon thirty (30) days' of receipt of notice of such switching fee from the Municipality or Participating Customer. The Supplier shall not be responsible to pay any switching fees imposed on Participating Customers who switch service from an alternative retail electric supplier related to the enrollment of a Participating customer into the Program.

4.3.6 Withdrawal by a Participating Customer. Participating Customers who notify the Supplier after the completion of the Opt-Out Period that the Participating Customer desires to withdraw from the Program ("Withdrawing Customer"), the Supplier must, at the direction of the Participating Customer, drop the Participating Customer from the Supplier's Full-Requirements Electricity Supply on the next available meter read, which will result in restoring the Participating Customer to Tariff Service. The Supplier may not assess an early termination fee to a Withdrawing Customer, provided that no early termination fee may be assessed to Withdrawing Customer who notifies the Supplier that they are withdrawing because they are moving outside of the geographic boundaries of the Municipality.

4.3.7 Opt Out Regret Period: Members electing to opt out of the Aggregation Program shall be readmitted to the program at the same terms of the agreement, provided they request readmission within 60 days of the Opt-Out Period end date. Additionally, any resident or small commercial business not eligible at the beginning of the contract shall be admitted so long as they request admission within 60 days from the Opt-Out Period end date.

Supplier Service Inquiries. After completion of the Opt-Out Period, the Supplier shall maintain and operate a toll-free telephone number and internet website for the purpose of receiving questions and comments from Participating Customers concerning the Full-Requirements Electricity Supply. The Supplier may inform Participating Customers that questions about the delivery and billing of the Full-Requirements Electricity Supply

should be directed to ComEd. Supplier shall promptly and courteously address customer service inquiries in a manner that meets or exceeds the ICC requirements for the operation of call centers.

4.3.8 Special Billing Customers. Subject to the Requirements of Law and due to the minimal and/or fixed nature of their existing billing rates, the following Eligible Customers shall not be automatically enrolled in the Program, but may subsequently elect to enroll in the Program as New Customers pursuant to Section 4.3.9 of this Agreement:

- a. Any Eligible Customer in the residential customer class, as described in Section 4.4.2 of this Agreement, that is taking service under the following ComEd rates:
  - i. Rate BESH - Basic Electric Service Hourly Pricing
  - ii. Rate RDS - Retail Delivery Service; and
- b. Any eligible Customer in the commercial customer class, as described in Section 4.4.2 of this Agreement, that is taking service under the following ComEd rates:
  - i. Rate BESH - Basic Electric Service Hourly Pricing
  - ii. Rate RDS - Retail Delivery Service. (collectively, the "Special Billing Customers").

4.3.9 New Customers. After the commencement of the Program and the enrollment of Participating Customers, the Supplier shall, at the request of a New Customer, as defined in this Section 4.3.9, immediately enroll the following customers in the Program and provide Full-Requirements Electricity Supply to those customers at the Price, with no additional surcharge or fee in addition thereto:

- a. Any Eligible Customer within the Municipality who moves to a new location within the Municipality;
- b. Any Eligible Customer who moves into an existing location within the Municipality;
- c. Any Eligible Customer who previously opted out of the Program during the Opt-Out Period and request readmission within sixty (60) days of the opt-out period end date; and
- d. Any Eligible Customer who was inadvertently omitted from the list of Participating Customers and not enrolled in the Program (collectively, the Eligible Customer(s) set forth in this Section 4.3.9.a. to 4.3.9.d., inclusive, are the "New Customers").

4.4 Billing Services. The Supplier shall supply the following Billing Services as provided in this Section 4.4:

4.4.1 Billing Generally. Supplier shall confirm that billing to Eligible Customers will be provided by ComEd under a consolidated billing format pursuant to "Rider PORCB - Purchase of Receivables and Consolidated Billing," and pursuant to the Requirements of Law. The Municipality acknowledges and agrees that ComEd shall bill Participating Customers for the Price of the Full-Requirements Electricity Supply as part of its billing for the distribution of such supply, and that the Supplier shall not bill Participating Customers.

4.4.2 Customer Classes. Eligible Customers shall be categorized within either the residential or commercial customer classes according to the applicable rates under which they received electricity supply from ComEd prior to participating in the Program.

4.4.2.1 Residential Customer Class. The residential customer class shall include Participating Customers taking service from ComEd under the following rates:

- a. Residential Single Family
- b. Residential Multi Family

4.4.2.2 Commercial Customer Class. The commercial customer class shall include those Participating Customers taking service from ComEd under the following rates:

- a. 15,000 kWh's or less Delivery Class

4.5 Compliance Services. The Supplier shall assist the Municipality in complying with any current or future Requirements of Law concerning the operation of the Program, including without limitation the provision of reports or other information as the Municipality may request from time to time.

4.6 Following the completion of the Opt-Out Period, the Supplier shall compile a complete list of all Participating Customers in the Program. Supplier shall update this list as new customers are added and deleted. Supplier shall make this list available to the Municipality within two (2) business days upon request by the Municipality. Additionally, within one hundred twenty (120) days of the end of this agreement, Supplier will make the Program's load data by rate class available to the Municipality. Load data shall include:

- a. Historical usage data.
- b. Capacity Peak Load Contribution ("CPLC") values and effective start and end dates.
- c. Network Service Peak Load Contribution ("NPLC") values and effective start and end dates.
- d. Meter bill group numbers.
- e. Rate codes.

## **ARTICLE 5 TERM**

5.1 Term. This Agreement commences as of the Effective Date and is for a term of twenty-four (24) consecutive monthly billing periods starting from the initial meter read date designated by the municipality in consultation with the Supplier in \_\_\_\_\_, 2012 and expires at the end of the last day of the \_th billing cycle for the Participating Customer(s) with the latest billing cycle (the "Term"). The Municipality and the Supplier may extend the Term for additional periods of time, by written agreement approved and executed by each Party (each an "Extended Term"). Nothing in this Article 5 related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by the Municipality to the Supplier shall continue beyond the Term or an approved Extended Term. Notwithstanding the provisions of this Section 5.1, if the rate for Tariffed Service falls below the Price during the Term, the Supplier may terminate this

Agreement after returning Participating Customers to Tariffed Service as provided in Section 4.1.3 of this Agreement.

5.2 In the event this agreement is not renewed or terminated for any reason, including expiration according to its terms, the Municipality may choose another ARES Provider or all Participating Customers shall be switched by the Supplier to service with ComEd in accord with the standard switching rules and applicable notices or as otherwise required by any applicable law or regulation.

## **ARTICLE 6 REMEDIES AND TERMINATION**

6.1 Municipality's General Remedies. In addition to every other right or remedy provided to the Municipality under this Agreement, if the Supplier fails to comply with any of the provisions of this Agreement (for reason other than a Force Majeure Event, as defined in Section 7.1. below, pursuant to Section 7.1 of this Agreement, or a Regulatory Event, as defined in Section 7.2 below, pursuant to Section 7.2 of this Agreement, the Municipality may give notice to the Supplier specifying that failure. The Supplier shall thereafter have fifteen (15) calendar days to take all necessary steps to comply fully with this Agreement, unless (a) this Agreement specifically provides for a shorter cure period or (b) an imminent threat to the public health, safety, or welfare arises that requires a shorter cure period, in which case the notice must specify the cure period, or (c) compliance cannot reasonably be achieved within 15 calendar days but the Supplier promptly commences a cure within fifteen (15) days of notice and diligently pursues the cure to completion within sixty (60) days. If the Supplier fails to comply within the applicable cure period, or a shorter time if an imminent threat, or if the Supplier fails to promptly commence a cure and diligently pursue the cure to completion, then the Municipality, subject to the limits of applicable federal or State of Illinois law, may take any one or more of the following actions:

- a. Seek specific performance of any provision of this Agreement or seek other equitable relief, and institute a lawsuit against the Supplier for those purposes.
- b. Institute a lawsuit against the Supplier for breach of this Agreement and, except as provided in Section 6.3 of this Agreement, seek remedies and damages as the court may award.
- c. In the case of noncompliance with a material provision of this Agreement, declare this Agreement to be terminated. Such termination shall be effective within ten (10) days of notice given by the Municipality to the Supplier.

If the rights and privileges granted to the Supplier under this Agreement are terminated, then the Supplier, within fourteen (14) calendar days after the Municipality's demand, shall reimburse the Municipality for all costs and expenses incurred by the Municipality, including, without limitation, reasonable attorneys' fees, in connection with that termination of rights or with any other enforcement action undertaken by the Municipality.

6.2 Actions on Termination or Expiration of this Agreement. This Agreement shall terminate upon the expiration of the Term or an Extended Term, as applicable, or the Municipality's termination of the Agreement pursuant to Section 6.1.c. Upon termination as a result of expiration of the Term (absent agreement upon an Extended Term), or upon termination as a result of expiration of an Extended Term, as applicable, Supplier shall return Participating Customers to Tariffed Service upon expiration of the Term or Extended Term, as applicable, on the first available meter read. In the event of the Municipality's termination of the Agreement prior to the

end of the Term or Extended Term pursuant to Section 6.1.c, as applicable, Supplier shall return Participating Customers to Tariffed Service on the second available meter read in order to provide the opportunity for Participating Customers to identify alternate sources of electrical supply prior to returning to Tariffed Service. Participating Customers shall not be liable for any termination fee as a result of such termination or expiration in accordance with the preceding sentences of this Section 6.2. Supplier shall not be responsible to any Participating Customer for any damages or penalties resulting from the return to Tariffed Service, including claims relating to the Tariffed Service price being higher than the Price herein.

6.3 Limitation of Liability. Except for the Supplier's failure to provide Full-Requirements Electricity Supply to Participating Customers or the disclosure of Customer Information in violation of the Requirements of Law, or as otherwise specifically provided herein, in no event will either Party be liable to the other Party under this Agreement for incidental, indirect, special, punitive, or consequential damages connected with or resulting from performance or nonperformance of this Agreement, irrespective of whether such claims are based upon breach of warranty, tort (including negligence of any degree), strict liability, contract, operation of law or otherwise.

## **ARTICLE 7 FORCE MAJEURE EVENTS**

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

7.2 Regulatory Event. The following shall constitute a "Regulatory Event":

- a. Illegality. It becomes unlawful for a Party to perform any obligation under this Agreement due to the adoption of, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.
- b. Adverse Government Action. A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially and adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determines to be unreasonable or (C) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure Event.
- c. New Charges. Any material increase in generation, energy, or utility taxes or charges enacted and effective after the Effective Date of this Agreement, provided such tax or charge is not imposed or caused to be imposed by Supplier. The imposition of such tax or charge after the Effective Date of this Agreement is not subject to automatic pass-through in Price, but would only constitute a Regulatory Event if the imposition of the charge materially and adversely affects Supplier's ability to perform.
- d. Occurrence of Regulatory Event. Within ten (10) days of the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has

occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties shall enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to this Agreement, within thirty (30) days or such other period as the Parties may agree in writing, the Municipality shall have the right, upon ten (10) days prior written notice, to terminate and close out its obligations under this Agreement.

## **ARTICLE 8 INDEMNIFICATION AND INSURANCE**

8.1 Indemnification. The Supplier shall indemnify and hold harmless the Municipality, their officers, employees, agents, volunteers, and attorneys, from and against any third party injuries, claims, demands, judgments, damages, losses and expenses of any kind, including reasonable attorney's fees and costs of suit or defense, arising from the Supplier's provision of the Services, except to the extent caused by the sole negligence of the Municipality. The Municipality shall provide the Supplier with timely written notice of its obligation to indemnify and defend the Municipality after the Municipality's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Supplier and/or the Municipality. Nothing herein shall be construed to limit the Supplier's duty to indemnify the Municipality by reference to the limits of insurance coverage described in this Agreement. In the event any such claim or demand is made, the Municipality shall be permitted to retain its choice of counsel, to be paid for by the Supplier, and the Municipality shall have the right to conduct and direct its own defense.

8.2 Insurance. Contemporaneous with the Supplier's execution of this Agreement, the Supplier shall provide certificates of insurance, all with coverages and limits as set forth in the RFP Package.

## **ARTICLE 9 CONFIDENTIAL INFORMATION**

9.1 Confidential and Proprietary Information. Notwithstanding anything to the contrary set forth herein, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature. The Parties agree that any information disclosed by a Party and designated as proprietary and confidential shall only be disclosed to those officials, employees, representatives, and agents of the other Party that have a need to know in order to administer and enforce this Agreement. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to a Party's corporate structure and affiliates, marketing plans, financial information unrelated to the calculation of the Price or rates pursuant to the Requirements of Law, or other information that is reasonably determined by a Party to be competitively sensitive. A Party may make proprietary or confidential information available for inspection but not copying or removal by the other Party's representatives. Compliance by the Municipality with the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* ("Illinois FOIA") or other similar "sunshine law," including compliance with an Illinois FOIA request, or an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois FOIA, or with a decision or order of a court with jurisdiction over the Municipality, shall not be a violation of this Section.

9.2 Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than the Supplier's confidential information, will be and remain the sole property of the Municipality. The Supplier shall promptly deliver all Data to the Municipality at the Municipality's request. The Supplier shall ensure the care and protection of the Data until that delivery. The Supplier may retain one (1) copy of the Data for the Supplier's records subject to the Supplier's continued compliance with the provisions of this Agreement.

9.3 Limitations on Customer Information. The parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Mutual Representations and Warranties. Each Party represents and warrant to the other Party, as of the date of this Agreement, that:

- a. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
- b. It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
- c. The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- d. It has reviewed and understands this Agreement; and
- e. It shall comply with all the Requirements of Law.

10.2 Supplier agrees that all information presented in its RFP response dated May 29, 2012, are accurate and there have been no material changes to that information.

10.3 Entire Agreement. This RFP Package, including this Agreement and all attachments hereto, contain all of the terms and conditions of the Agreement reached by the Parties, and supersede all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by both Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.



10.4 RFP Packages and Exhibits. The RFP Package and all exhibits attached to this Agreement are, by this reference, incorporated into and made part of this Agreement. In the event of any inconsistency between the terms herein and the Terms and Conditions of the RFP, the provisions of the Master Agreement shall control.

10.5 No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

10.6 No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, that the Municipality may have under Federal or state law unless such waiver is expressly stated herein.

10.7 Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.8 Authority to Sign Agreement. Each Party warrants to the other Parties that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of each Party warrants to the other Parties that he/she is authorized to execute this Agreement in the name of the Party for which he/she is signing.

10.9 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Municipality and the Supplier and their respective successors, grantees, lessees, and assigns throughout the Term of this Agreement.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

Supplier: FES  
Signed: Jerry Bellitt  
Printed/Typed Name: Jerry Bellitt  
Title: VP Sales  
Date: 6/13/12  
Attest: \_\_\_\_\_

Municipality: Village of Danvers Grove  
Signed: David Fieldman  
Printed/Typed Name: David Fieldman  
Title: Village Manager  
Date: June 13, 2012  
Attest: Linda J. Brown  
DEPUTY VILLAGE CLERK

**EXHIBIT A**

**RFP Package**



**REQUEST FOR PROPOSAL**  
**Electricity Aggregation Procurement**  
**THE VILLAGE OF DOWNERS GROVE &**  
**THE VILLAGE OF WESTMONT**

Name of Proposing Company: FirstEnergy Solutions

Project Name: Electricity Aggregation Procurement

Proposal Due: 3:00 p.m. May 29, 2012

Pre-Proposal Conference: None

Required of Awarded Contractor:

Certificate of Insurance: YES

Proposals will be received electronically addressed to [epetrarca@downers.us](mailto:epetrarca@downers.us)

ENZA PETRARCA  
VILLAGE ATTORNEY  
VILLAGE OF DOWNERS GROVE  
801 BURLINGTON AVENUE  
DOWNERS GROVE, IL 60515  
PHONE: 630/434-5541  
FAX: 630/434-5493  
[www.downers.us](http://www.downers.us)

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

The Village of Downers Grove and the Village of Westmont (collectively referred to as the “Village” or “Villages”) hereby request proposals from qualified Proposers (also referred to as “bidder” or “supplier”) The Villages reserve 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. PROPOSER’S RESPONSE TO RFP
- V. MASTER SUPPLY AGREEMENT
- VI. PLAN OF OPERATION AND GOVERNANCE

**DO NOT DETACH ANY PORTION OF THIS DOCUMENT. INVALIDATION COULD RESULT.** Proposers MUST submit copies of the total proposal electronically to Enza Petrarca, Village Attorney at [epetrarca@downers.us](mailto:epetrarca@downers.us) . Upon formal award of the proposal this RFP document shall become the Agreement, the successful Proposer will receive a copy of the executed Agreement.

# **I. REQUEST FOR PROPOSALS**

## **1. GENERAL**

- 1.1 Notice is hereby given that the Village of Downers Grove will receive Proposals electronically up to 3:00 p.m. May 29, 2012 addressed to [epetrarca@downers.us](mailto:epetrarca@downers.us).
- 1.2 Proposals must be received by the time and date specified. Proposals received after the specified time and date will not be accepted.
- 1.3 Proposal forms shall be sent to the Village of Downers Grove, ATTN: Enza Petrarca, Village Attorney, via electronic mail addressed to [epetrarca@downers.us](mailto:epetrarca@downers.us) .
- 1.4 All Proposals must be submitted on the forms supplied by the Village and signed by a proper official of the company submitting the Proposal.
- 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. **DO NOT SUBMIT A PROPOSED CONTRACT. UPON ACCEPTANCE BY THE VILLAGE, THIS RFP DOCUMENT AND ALL COMPONENTS SHALL BECOME A BINDING CONTRACT.**
- 2.2 No oral or telephone interpretations of specifications shall be binding. All requests for interpretations or clarifications shall be made at least two (2) business days prior to the date set for receipt of Proposals and addressed to Jim Belden, Belden Energy Solutions at [jbelden@beldenenergy.com](mailto:jbelden@beldenenergy.com). All changes or interpretations of the specifications shall be made by the Villages in a written addendum to the proposers of record.
- 2.3 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 Villages.
- 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, bonds, 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. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

- 3.1 A Proposal that is in the possession of the Village may be altered by a letter bearing the

signature or name of the person authorized for submitting a Proposal, provided that it is received prior to the time and date set for the Proposal opening. Telephone, email or verbal alterations of a Proposal will not be accepted.

- 3.2 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 the person authorized for submitting Proposals. Proposals may not be withdrawn after the Proposal opening and the non-price portions of the submittal shall remain valid for a period of ninety (90) days from the date set for the Proposal opening, unless otherwise specified.

#### **4. RESERVED RIGHTS**

- 4.1 The Villages reserve 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 Villages. Time and date requirements for receipt of Proposals will not be waived.

## **II. TERMS AND CONDITIONS**

### **5. VILLAGE ORDINANCES**

- 5.1 The successful Proposer will strictly comply with all ordinances of the Village of Downers Grove, the Village of Westmont and laws of the State of Illinois.

### **6. USE OF VILLAGE'S NAME**

- 6.1 The Proposer is specifically denied the right of using in any form or medium the names of the Villages for public advertising unless express permission is granted by the Villages.

### **7. INDEMNITY AND HOLD HARMLESS AGREEMENT**

- 7.1 To the fullest extent permitted by law, the Proposer shall indemnify, keep and save harmless the Villages 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 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 Villages 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 Villages for its own negligence. The Proposer shall indemnify, keep and save harmless the Villages only where a loss was caused by the negligent, willful or reckless acts or omissions of the Proposer, its employees, or its subcontractors.

### **8. NONDISCRIMINATION**

- 8.1 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 it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11136 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.

- 8.2 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.

### **9. SEXUAL HARASSMENT POLICY**

- 9.1 The Proposer, as a party to a public contract, shall have a written sexual harassment policy that:

- 9.1.1 Notes the illegality of sexual harassment;
- 9.1.2 Sets forth the State law definition of sexual harassment;
- 9.1.3 Describes sexual harassment utilizing examples;
- 9.1.4 Describes the Proposer's internal complaint process including penalties;
- 9.1.5 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
- 9.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

## **10. EQUAL EMPLOYMENT OPPORTUNITY**

10.1 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:

- 10.1.1 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 disability unrelated to ability, order of protection status, military status, 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.
- 10.1.2 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.
- 10.1.3 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 disability unrelated to ability, order of protection status, military status, sexual orientation, or an unfavorable discharge from military services.
- 10.1.4 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.

- 10.1.5 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.
- 10.1.6 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.
- 10.1.7 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 subdivisions or municipal corporations.

## **11. DRUG FREE WORK PLACE**

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

- 11.1 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.
- 11.2 Establishing a drug free awareness program to inform employees 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.
- 11.3 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.
- 11.4 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 from an

employee or otherwise receiving actual notice of such conviction.

- 11.5 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.
- 11.6 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.
- 11.7 Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

**12. INSURANCE REQUIREMENTS**

12.1 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 or 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 12.9 below)	\$2,000,000	Annual Aggregate
Umbrella Liability	\$ 5,000,000	

12.2 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”.

- 12.3 Comprehensive Automobile Liability Insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles.
- 12.4 Workers Compensation coverage shall include a waiver of subrogation against the Village.
- 12.5 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.
- 12.6 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, its 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 the 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***.
- 12.7 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 insurance 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 Contract pursuant to its terms.
- 12.8 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) days 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 of 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.
- 12.9 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.

- 12.10 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.

**13. CAMPAIGN DISCLOSURE**

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

- 13.2 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.

- 13.3 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.

- 13.4 By signing the bid or proposal 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.

**14. SUBLETTING OF CONTRACT**

- 14.1 No contract awarded by the Village shall be assigned or any part subcontracted without the written consent of the Village Managers. In no case shall such consent relieve the Proposer from its obligation or change the terms of the Contract.

All approved subcontracts shall contain language which incorporates the terms and conditions of this Contract.

**15. RELATIONSHIP BETWEEN THE PROPOSER AND THE VILLAGE**

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

**16. STANDARD OF CARE**

- 16.1. Services performed by Proposer under this Contract 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 Contract, or in any report, opinions, and documents or otherwise.

16.2 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.

16.3 For Professional Service Agreements: 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 contactor(s') failure to perform its work in accordance with contract documents.

**17. GOVERNING LAW**

17.1 This Contract 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.

**18. SUCCESSORS AND ASSIGNS**

18.1 The terms of this Contract 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 Contract 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 subcontractors.

**19. WAIVER OF CONTRACT BREACH**

19.1 The waiver by one party of any breach of this Contract 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 Contract and will not be construed to be a waiver of any provision except for the particular instance.

**20. AMENDMENT**

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

**21. SEVERABILITY OF INVALID PROVISIONS**

21.1 If any provisions of this Contract are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Contract, 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.

**22. NOTICE**

22.1 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**

**Village Manager  
Village of Westmont  
31 West Quincy Street  
Westmont, IL 60559**

And to the Proposer as designated in the Contract Form.

**23. COOPERATION WITH FOIA COMPLIANCE**

23.1 Contractor acknowledges that the Freedom of Information Act may apply to public records in possession of the Contractor or a subcontractor. Contractor and all of its subcontractors shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. (5 ILCS 140/1 et.seq.)

**ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED**

Hamilton, Bermuda

**CERTIFICATE OF INSURANCE**

(Excess Liability)

This Certificate is furnished to the Certificate Holder named below as a matter of information only. Neither this Certificate nor the issuance hereof makes the Certificate Holder an additional insured under the policy of insurance identified below (the "Policy") or modifies the Policy in any manner. The Policy terms are solely as stated in the policy or in any endorsement thereto. Any amendment, change or extension of the Policy can only be effected by a specific endorsement issued by the Company and attached to the Policy.

The undersigned hereby certifies that the Policy has been issued by Associated Electric & Gas Insurance Services Limited (the "Company") to the Named Insured identified below for the coverage described and for the policy period specified.

Notwithstanding any requirements, terms or conditions of any contract or other document with respect to which this Certificate may be issued or to which it may pertain, the insurance afforded by the Policy is subject to all of the terms of the Policy.

**NAME OF INSURED:** FirstEnergy Corp. and its Subsidiaries, including FirstEnergy Solutions

**PRINCIPAL ADDRESS:** 76 South Main Street, Akron, Ohio 44308

**POLICY NUMBER:** XO 137 A1A11                      **POLICY From:** July 1, 2011  
**PERIOD: To:** July 1, 2012

**RETROACTIVE DATE:** June 1, 1986

**DESCRIPTION OF COVERAGE:** Claims-First-Made Excess Liability Policy

**LIMIT OF LIABILITY:** \$7,000,000 per occurrence and in the aggregate, where applicable.

**DESCRIPTION OF OPERATIONS:** Electricity Aggregation Procurement for The Village of Downers Grove and The Village of Westmont

Should the Policy be cancelled, assigned or changed in a manner that is materially adverse to the Insured(s) under the Policy, the undersigned will endeavor to give 30 days advance written notice thereof to the Certificate Holder, but failure to give such notice will impose no obligation or liability of any kind upon the Company, the undersigned or any agent or representative of either.

**DATE:** May 29, 2012

**ISSUED TO:** The Village of Downers Grove

**ADDRESS:** 801 Burlington Avenue

Downers Grove IL 60515  
Attn: Enza Petrarca

**AEgis INSURANCE SERVICES, INC.**



**BY:**  
At Jersey City, New Jersey

### **III. DETAIL SPECIFICATIONS**

**SUMMARY OF SPECIFICATIONS (PURCHASE DESCRIPTION):** The Village of Downers Grove and the Village of Westmont (“Village” or “Village’s”) are soliciting offers from licensed and certified ARES (also referred to as “proposer”, “bidder” or “supplier”) to supply electric power and arrange for associated delivery to accounts located in the Commonwealth Edison (ComEd) delivery service area. This RFP includes eligible residential and small commercial electric accounts.

The Village will pursue a bidding process to select an ARES. The bidding process seeks to establish each Supplier’s: 1) professional qualifications, and 2) a firm offer of managing an Opt-Out program and furnish fixed price electricity and related transmission costs to supply Program participants. The Supplier shall provide pricing options ranging from a base rate to various alternative supply options. The Supplier will perform services in a manner consistent with the Plan of Operation and Governance and Master Power Service Agreement. General consumption data for the Villages are attached. This information is considered confidential under the authority of Section HH of the Illinois Consumer Fraud Act and should be handled as such.

#### **KEY INFORMATION ABOUT THIS REQUEST FOR PROPOSALS**

**RFP CONTACT:** Jim Belden  
Belden Energy Solutions  
Phone: 630-915-1970  
Fax: 630-981-0535  
Email: [jbelden@beldenenergy.com](mailto:jbelden@beldenenergy.com)

**QUESTIONS:** Please direct all questions to the RFP Contact. Only written answers to questions will be binding on the Village.

**SUBMISSION DEADLINE AND PROCUREMENT TIMETABLE:** The following dates are set forth for informational and planning purposes; however, the Village reserves the right to change the dates.

Issue RFP	May 18, 2012
Due Date and Time for Responses	May 29, 2012; 3 PM
Responses Opening Date and Time	May 29, 2012; 3 PM
Notification of Selected Supplier	June 8, 2012
Anticipated Date for Agreement	June 8, 2012

**NUMBER OF COPIES:** Submit one (1) signed electronic copy the Proposal.

**SUBMIT PROPOSALS TO:** Submit an electronic version of your response to Enza Petrarca, Village Attorney, Downers Grove at: [epetrarca@downers.us](mailto:epetrarca@downers.us)

**OPENING:** The Village will open and record the names and other information of all Proposals submitted in a proper and timely manner. All Proposals become the property of the Village and will not be returned except in the case of a late submission.

**BID BONDS OR OTHER SECURITY:** No Bid or Security Bonds will be required.



**COMMODITY PRICING:** The Village understands fix price offers are time sensitive and subject to current market conditions.

## **1. SPECIFICATIONS:**

The Village is interested in receiving the best price and the service for their residents, and has established the following Specifications. The Specifications represent a portion of the Village's due diligence in selecting a licensed AND qualified Supplier for the residential and small commercial accounts included in the Village's Aggregation.

The Village requests that Suppliers provide responses to each Specification noted in sections below. Responses are to be formatted in a manner that follows the outline set forth below.

Upon completion of the RFP process, the selected Supplier will be expected to enter into a Power Supply Agreement similar to the sample provided herein.

**PROPOSED GENERAL AGREEMENT TERMS:** The Village seeks to preserve the following general terms in a Power Supply Agreement. Suppliers may propose alternatives to the following specifications; however, the Village will not be obligated to accept alternative specifications, and reserves the right to reject proposals that contain extensive proposed revisions.

**Term of Agreement.** The Power Supply Agreement will be fully executed upon Acceptance of a final fixed commodity supply price by the Village Designee. The initial Power Supply Agreement term will be for a term not less than one (1) year. The Village will have discretion to determine the length of any contract periods, and the duration of Pricing Periods established in the final negotiations.

**Single Supplier.** The Village will select a single Supplier on behalf of all Aggregation Members.

**Subcontractors.** The Supplier may not employ any subcontractors other than as necessary. Subcontractors shall be held to the same strict confidentiality standards applicable to the selected Supplier, and will be required to otherwise comply with the requirements of the Power Supply Agreement.

**Indemnification and Hold Harmless.** The Supplier must indemnify the Village pursuant to the terms of the Agreement, and hold harmless the Village from any financial obligations arising from the Program

**Assignment.** The Supplier may not assign the awarded contract without the written consent of the Village.

**Qualifications.** The Supplier must be responsive to the qualification requests contained in this RFP.

**Insurance.** The Supplier must obtain and maintain, for the duration of the Agreement, such proof of insurance and performance security as noted in the RFP.

**Voluntary Termination Notice.** The Supplier must agree to notify the Village and negotiate with the Village at least sixty (60) days in advance of attempting to terminate the agreement for any reasons other than (i) the scheduled end date or (ii) Force Majeure.

**Rate Advantage.** The Village is not obligated to accept a fixed price offer from the selected Supplier that is not below the published or anticipated Utility default tariff rates.

**Compliance with Plan of Governance and Operation.** The Supplier shall provide all services required under the Agreement in accordance with the Plan of Governance and Operation adopted by the applicable municipality.

## **2. PROPOSED CONTRACT PRICING TERMS:**

The Village seeks to maintain an orderly process with regard to setting a final contract price with the selected supplier. The Village and Consultant will request and receive fixed price market quotes for 12-, 24-, and 36-month periods. The Villages will ask Suppliers to quote supply prices on a stand-alone basis and as a combined load for the eligible residential and small commercial customers. If the price quote is deemed acceptable by the Consultant, the Consultant will inform the Village Designee of the price and pricing components and recommend Acceptance. If accepted, the Village Designee will affirm Acceptance of the fixed price verbally and in writing to the selected Supplier on the same day.

**Supply Mixes.** Suppliers must be capable of providing supply quotes for the following energy mixes:

**Standard Unit Price.** This refers to Supply that includes the state-mandated level of renewable energy resources as required by the State of Illinois Renewable Portfolio Standard.

**Supplemental Renewable Energy Certificates.** The Village may also request the purchase of RECs at various percentage levels. The supplemental RECs are to be sourced from biomass, hydro, wind, solar photovoltaic, or captured methane-landfill gas and certified by a reliable and existing authority. Costs associated with supplying additional RECs will be submitted as pricing options during the solicitation process.

**Voluntary RECs Program Alternative.** As an alternative to the Supplemental RECs program listed above, the Village may request Supplier to propose a voluntary program whereby Members may elect to acquire RECs for their respective account.

**Fees Imposition.** The Supplier will not impose any conditions, terms, fees, or charges on any Member served by the Program unless the particular term, condition, fee, or charge is clearly disclosed to the Member at the time the Members choose not to Opt-Out of the Program OR the fee is imposed by an authority to which the Supplier is subject (i.e. federal or state regulatory bodies). In the event that a regulatory body imposes a fee after the initial Opt-Out period, the Supplier will be required to notify and receive from the Village permission to pass through such charges to Members.

**Consultant's Fee.** The selected Supplier shall include an additional fee of \$0.00015 per kW/hr – not to exceed \$10,000 per year per municipality to compensate the Village's energy consultant. This fee will be provided by the selected Supplier directly to Belden Energy Solutions Inc.

**Utility Fees.** The selected Supplier will arrange for a single Utility bill to be sent to Members by ComEd. Additionally, the selected Supplier will ensure that the following fees continue to be collected and processed by ComEd: Monthly Payments, Late Payments, Delivery Charges and Monthly Service Fee.

**Enrollment and Disenrollment Charges.** No fees will be assessed to any resident for entering the Aggregation Program. An Early Contract Exit Fee not to exceed \$50 per customer can be specified in the response.

## **3. PROPOSED CONTRACT SUPPLY AND SERVICE TERMS:**

The Villages will seek to preserve the following contract pricing terms in a Power Supply Agreement with the selected Supplier. Suppliers may propose alternatives to the following specifications within their response to this RFP. The Village will not be obligated to accept alternative specifications, and reserves the right to reject proposals that contain extensive proposed revisions.

**Electricity Supply.** The selected Supplier will supply firm power requirements to each of the accounts for which it is ultimately contracted to serve.

**Transmission.** The selected Supplier will be responsible for acquiring and paying all necessary transmission services to the Point(s) of Delivery including all electricity commodity costs, PJM charges, Congestion Charges, Distribution and Transmission Losses, and Capacity Charges. The selected Supplier will be responsible for monitoring and negotiating interstate transmission discounts.

**Billing.** The selected Supplier will make all arrangements to ensure that Aggregation Members continue to receive a single monthly bill from ComEd.

**Data.** The selected Supplier will maintain a comprehensive and confidential database recording historical account information for the accounts enrolled under the Power Supply Agreement, and to maintain a current list of enrolled accounts, accounts that have opted-out of the Aggregation Program, and accounts that have been added to the Aggregation Program.

**Member Service.** The selected Supplier will maintain certain minimum levels of customer service including:

**Program Management and Documentation.** The selected Supplier must have Standard Operating Procedures in place that govern Member education, Opt Out notification, customer inquiries, and public outreach regarding the Aggregation Program.

**Confidentiality.** The selected Supplier must maintain the confidentiality of customer information.

**Customer Service.** The selected Supplier must assist Aggregation Members with their inquiries. Concerns regarding service reliability should be directed to ComEd, billing questions should be directed to ComEd or the selected, and any unresolved disputes should be directed to the ICC. Inquiries from Aggregation Members should be managed within the following performance parameters:

**Telephone Inquiries.** The selected Supplier must maintain a toll-free telephone access line which will be available to Aggregation Members at least 24 hours a day, seven days a week. Trained company representatives must be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

**Internet and email.** The selected Supplier must establish and maintain a website for the Aggregation Members. The website will provide basic information concerning the Aggregation program and will facilitate customer inquiries by providing a platform for the submission of questions by email or text. Responses to inquiries submitted through the website platform must be generated within 24 hours.

**Bilingual Services.** The selected Supplier must provide customer service for Members requiring non-English verbal and written assistance.

**Hearing Impaired.** The selected Supplier must provide customer service for hearing impaired Members.

**Enrollments.** The selected Supplier must be prepared to perform the following Aggregation account enrollment tasks:

**Opt-Out notifications.** The selected Supplier must manage the Opt-Out Notification

process under the supervision of the Village and the Consultant. A single database must track account enrollment and billing data.

**New Accounts.** The selected Supplier must facilitate the addition of new customer accounts to the Aggregation Programs during the term of the Service Agreement. Residents and businesses that move into the community may contact the Supplier to obtain enrollment information. The Supplier will guarantee that customers opting into the Aggregation Programs within 60 days after the initial Opt-Out Period will receive the same price, terms, and conditions as did the initial participants. The Supplier will not guarantee that customers opting into the Aggregation Programs 60 days after the initial Opt-Out Period will receive the same price, terms, and conditions as did the initial participants. The selected Supplier's decision whether or not to extend an offer will be based, in part, on the market prices at the time of request.

**Re-Joining the Aggregation Group.** The selected Supplier must assist Members that have Opted Out to rejoin at a later date. The enrollment for these Members will be conducted in the same manner as new residents moving into the Village. These customers may contact the selected Supplier at any time to obtain enrollment information. The selected Supplier will not guarantee that customers opting in at a later date will receive the same price, terms and conditions as did the initial participants.

**Moving Within the community and Maintaining the Same Account Number.** The selected Supplier shall continue service at the same rate and under the same terms and conditions for any Member who relocates within the Village prior to the expiration of the contract term, providing that the Member notifies the Supplier of their desire to do so with thirty (30) days notice. Moving within the Village may cause the Member to be served for a brief period of time by ComEd. The Supplier shall have the right to bill the participant for any associated switching fee, if any, imposed by ComEd. Members may Opt-Out without penalty under these circumstances.

**Percentage of Income Payment Plan (PIPP).** The selected Supplier must facilitate billing for residents enrolled in the PIPP bill payment assistance program for low- income residential customers. The selected Supplier must also notify PIPP customers of the consequences of participating in the Aggregation.

**Other.** The selected Supplier must accept the following terms:

**Credit/Deposit Requirements.** Collection and credit procedures are to be the responsibility of ComEd, the selected Supplier, and the individual Member. Members will be required to remit and comply with the payment terms of ComEd and/or the Supplier. This Program will not be responsible for late or no payment on the part of any of its Members. The Village and its members will have no separate credit or deposit policy.

**Reliability of Power Supply.** The Program will only affect pricing for the generation source of power. ComEd will continue to deliver power through their transmission and distribution systems. Responsibility for maintaining system reliability continues to rest with ComEd. If members have service reliability problems, they should contact ComEd for repairs. The ICC has established "Minimum Reliability Standards" for all utilities operating distribution systems in Illinois. Customer outages, duration of outages, interruptions, etc., are monitored to ensure reliability remains at satisfactory levels. In addition to maintaining the "wires" system, ComEd is required to be the "Provider of Last Resort." This means, should the selected Supplier fail for any reason to deliver any or all of the electricity needed to serve the Members needs, ComEd will immediately provide for the shortfall. ComEd would then bill the Supplier for the power provided on their behalf. The Members would incur no additional cost.

**Contract Monitoring.** The selected Supplier will responsible for the faithful performance of the contract and shall have internal monitoring procedures and processes to ensure compliance.

**Monitoring.** The selected Supplier will facilitate the Village's efforts to monitor and track the

selected Supplier's performance over the course of the contract. Information gathered by the Village may be used in administration of the contract, and may be used in consideration of the Supplier in future procurements or contract extensions.

**Cooperation.** The selected Supplier will cooperate with the Village in monitoring and tracking Program activity. This may require the selected Supplier to report progress, problems and proposed resolutions, performance records, allow random inspections of its facilities, participate in scheduled meetings and provide management reports as requested by the Village.

**Proposed Delivery Specifications.** The Village will seek to preserve the following contract pricing terms in a Power Supply Agreement with the selected Supplier.

**Quality and Measurement.** The selected Supplier must warrant that the electricity sold and delivered shall be of the specifications required by PJM and ComEd. The selected Supplier shall indemnify the Village and Buyers, and hold them harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from the Supplier's breach of this warranty.

**Title.** The selected Supplier must warrant that it possesses good marketable title to all electricity sold, and is free from all liens and adverse claims.

**Delivery.** The selected Supplier shall deliver all electricity supplied under the Power Supply Agreement at appropriate locations.

#### **4. SUPPLIER QUALIFICATIONS:**

Suppliers are provided the following list of qualification metrics deemed to establish the capacity and capability of a Supplier to service the Village's Aggregation Program. We request that suppliers provide responses to each item listed, and to also add other qualifications the supplier believes would enhance the Program.

**Licenses and Registrations.** Is the Supplier allowed to sell electricity at to retail customers in Illinois? Documentation should include:

Documentation of service authority from the Illinois Commerce Commission as a certified retail electric supplier and any and all other licenses or certifications required by the ICC;

Company's bond posting with the ICC;

Registration as a retail electric supplier for ComEd residential customers;

Docket number and date FERC Power Marketing Authority obtained

Does the supplier have existing management information systems that will ensure a smooth notification and enrollment process for the Aggregation Program? Documentation should include: Description of the features and benefits of your existing customer database system. Please include at least the following: Platform description and specifications, exportability of data, frequency of data updates, Standard reports availability (type and description), and other features.

**Marketing and Support Services:** Does the Supplier have the materials, time and resources to support Program marketing, outreach and education tasks? Documentation should include:

-Proof of an existing local or toll-free telephone number for customer service and complaints related to the Aggregation Program;

-Your firm's detailed plan for reaching and servicing multi-lingual customers or customers with disabilities as per the requirements;

-Samples of a website to support the Aggregation Members;

- Draft timeline identifying measures to be executed after the Village has selected a Proposal
- Descriptions of proposed modes of communications (print, mailing, broadcast, etc.)

To support the Opt-Out processes

**Corporate Structure and Financial Capacity:** Does the supplier have sufficient personnel, management expertise, and financial capacity?

- Describe the how the firm's corporate structure facilitates the sale of energy power supplies to the ComEd residential and small commercial retail customers in the Village;
- Identify key management members and list experience
- Identify the staff to be assigned to the Village Program and list experience.

#### **IV. PROPOSER'S RESPONSE TO RFP**

(Proposer must insert response to RFP here. DO NOT insert a form contract, the RFP document including detail specs, the Proposer's response and the master supply agreement will become the Contract with the Villages.)

#### **PRICING TEMPLATE for Rate Classes B70, B71, B72, B73, B90, B91, B92, and B93**

##### **Term Length: 12 months starting in July-August 2012**

Village	Standard Unit Price (SUP) W/ No Additional RECS	SUP With 25% Additional RECS	SUP With 50% Additional RECS	SUP With 75% Additional RECS	SUP W/100% Additional RECS
Downers Grove	\$4.42	\$4.44	\$4.46	\$4.48	\$4.50
Westmont	\$4.42	\$4.44	\$4.46	\$4.48	\$4.50
Combined Load	\$4.40	\$4.42	\$4.44	\$4.46	\$4.48

##### **Term Length: 24 months**

Village	Standard Unit Price (SUP) W/ No Additional RECS	SUP With 25% Additional RECS	SUP With 50% Additional RECS	SUP With 75% Additional RECS	SUP W/100% Additional RECS
Downers Grove	\$4.71	\$4.73	\$4.75	\$4.77	\$4.79
Westmont	\$4.71	\$4.73	\$4.75	\$4.77	\$4.79
Combined Load	\$4.70	\$4.72	\$4.74	\$4.76	\$4.78

##### **Term Length: 36 months**

Village	Standard Unit Price (SUP) W/ No Additional RECS	SUP With 25% Additional RECS	SUP With 50% Additional RECS	SUP With 75% Additional RECS	SUP W/100% Additional RECS
Downers Grove	\$5.25	\$5.27	\$5.29	\$5.31	\$5.33
Westmont	\$5.25	\$5.27	\$5.29	\$5.31	\$5.33
Combined Load	\$5.25	\$5.27	\$5.29	\$5.31	\$5.33

#### **Note:**

Supplier provides a fixed price (\$/kW/hr) for electricity supply, Opt-Out program management and consultant's fee. If the fixed price quote is deemed acceptable by the Consultant, the Consultant will inform the Village Designee of the price and recommend acceptance. If accepted, the Village Designee will affirm acceptance of the price verbally and in writing to the selected Supplier in an expeditious manner.

An Early Contract Exit Fee not to exceed \$50 per customer can be considered. Please state your proposed early exit fee, if any:

**Once an enrollment has taken place, individual customers have entered into an agreement with FirstEnergy Solutions and are subject a cancellation fee if the agreement is broken for any other reasons than moving or account termination. Residential customers will be assessed a \$25.00 cancellation fee and commercial customers, a \$50.00 cancellation fee. However, FirstEnergy Solutions remains open to discussing the level of cancellation fees with the community.**

**Voluntary RECs Program Alternative.** Please provide pricing and program management details indicating how a voluntary program can be integrated into the Village's Opt-Out plan:

**FirstEnergy Solutions will provide a 100% renewable program as an option for residents that do not want the standard program. The option will be listed on the opt-out notification and direct the customer to a customer web page for enrollment.**

**SUPPLIER QUALIFICATIONS.** Suppliers are provided the following list of qualification metrics deemed to establish the capacity and capability of a Supplier to service the Village's Aggregation Program. We request that suppliers provide responses to each item listed, and to also add other qualifications the supplier believes would enhance the Program.

Documentation of service authority from the Illinois Commerce Commission as a certified retail electric supplier and any and all other licenses or certifications required by the ICC:

**Please see Attachment A: FirstEnergy Solutions Certificate of Service Authority and State of Illinois Business License**

Company's bond posting with the ICC:

**08-0142**

Registration as a retail electric supplier for ComEd residential customers:

**ComEd (Docket# 08-0522) granted license on October 8, 2008. Please see Attachment B: Retail Electric Supplier Agreement**

Docket number and date FERC Power Marketing Authority obtained:

**Docket number: ER01-2968-000, 10/24/2001**

**MIS Infrastructure:** Does the supplier have existing management information systems that will ensure a smooth notification and enrollment process for the Aggregation Program? Documentation should include: Description of the features and benefits of your existing customer database system. Please include at least the following: Platform description and specifications, exportability of data, frequency of data updates, Standard reports availability (type and description), and other features.

**FirstEnergy Solutions has completed all necessary testing with ComEd and utilizes Electronic Data Interchange for enrollments, billing, usage, and all other communications**



**with ComEd. The system is fully functional at all times and includes back-up file saving systems. FirstEnergy Solutions utilizes the Excelergy 7.0 Platform, with data available for exporting and reported as needed. Queries can be written to extract information and reports on any parameter in the system.**

**Marketing and Support Services:** Does the Supplier have the materials, time and resources to support Program marketing, outreach and education tasks? Documentation should include:

-Proof of an existing local or toll-free telephone number for customer service and complaints related to the Aggregation Program

**FirstEnergy Solutions has designed and implemented a Customer Care organization and process that will meet the requirements of a community aggregation program.**

**FirstEnergy Solutions has a Customer Interaction Center (CIC) staffed from 8:00 a.m. to 5:00 p.m./EST weekdays. Knowledgeable and experienced Customer Care Representatives (CCRs), supported by an Operation Manager with more than ten years call center experience, are there to serve our customers. The phone number is 1-888-636-3749.**

**The CIC typically answers calls in 30 seconds or less, with an objective to resolve 90% of customer issues with one call. Written correspondence is provided to the customer for more complex inquiries.**

**All of FirstEnergy Solutions' Customer Service systems are designed to be flexible, so that we can quickly respond to the changing needs of our customers. In addition, the entire FirstEnergy Solutions team can be called upon at any time for assistance.**

-Your firm's detailed plan for reaching and servicing multi-lingual customers or customers with disabilities as per the requirements:

**FirstEnergy Solutions has, in place, the capability to call on interpreters that are conferenced in with our CIC Team Member and customer to interpret for customers in over 300 languages. The interpreters are utilized to best serve multi-lingual customers and customers with disabilities so that all residents may have their questions or concerns tended to effectively and efficiently.**

-Samples of a website to support the Aggregation Members:

**<https://www.fes.com/content/fes/home/offers/community/muniaggregation.html>**

-Samples of Opt-Out Mailing Notices and Individual Power Service Agreements:

**Please see Attachment C: Sample Opt-Out Materials and Sample Master Agreement**

-Draft timeline identifying measures to be executed after the Village has selected a Supplier assuming early June Decision:

**The same day that the contract is awarded, FirstEnergy Solutions assumes that the final Master Agreement will be negotiated and executed. It is expected that the final customer**

lists separated by community and eligible rate codes will be provided to FirstEnergy Solutions, by the consultant, on the next business day. Upon receipt of the information, FirstEnergy Solutions will begin processing the materials and will provide the consultant with opt-out materials for approval. Next, a joint press release will be issued announcing the contract award (FirstEnergy Solutions will work with the community on any additional press releases as needed through the term of the contract). FirstEnergy Solutions will send opt-out materials and mailing list to the printer for processing approximately 7 days after receiving the mail list from the consultant. Once received, the printer will process and mail the opt-outs to residents within five days of receipt of the information. At the end of the opt-out and grace period for mail post-marked by the deadline, FirstEnergy Solutions will send the enrollments to ComEd.

To support the Opt-Out processes:

**Corporate Structure and Financial Capacity:** Does the supplier have sufficient personnel, management expertise, and financial capacity? Please explain:

FirstEnergy Solutions is a wholly owned subsidiary of FirstEnergy Corp. and was created in 1997 to better focus the retail electric services in one entity. FirstEnergy Solutions is a licensed provider of electric service in the State of Illinois under license number 08-0142; in the State of Ohio under license #00-011; Commonwealth of Pennsylvania under license number A-110078; in the State of New Jersey under license number PESL-0024; in the State of Maryland under docket number IR-225; in the State of Michigan under case number U-13244; in the District of Columbia under license number EA00-4; and in the State of Delaware under Docket Number: 99-436; FirstEnergy Solutions annually produces \$650 million in revenue.

Because FirstEnergy Solutions is sourcing from our own generation, we are not subject to typical collateral requirements or margin calls as other suppliers without physical generation assets would be subject to, therefore no financial assurances are required.

FirstEnergy Solutions purchases various types of liability insurance, including coverage required by state and federal statute. Additionally, because of the significant assets of the company, FirstEnergy Solutions is able to self-insure many exposures. Specific coverage purchases include:

- Workers' Compensation for statutory obligations and Employer's Liability Insurance

Excess General Liability including automobile liability coverage, with a minimum limit of \$5 million per occurrence.

-Describe how the firm's corporate structure facilitates the sale of energy power supplies to the ComEd residential and small commercial retail customers located in the Village:

FirstEnergy Solutions was formed in 1997 as the competitive subsidiary of FirstEnergy Corp., a Fortune 200 company and one of the nation's largest investor-owned electric utility, with a long-standing presence in Ohio, Pennsylvania, Maryland, New Jersey, Virginia and West Virginia through predecessor companies. It is the unregulated affiliate of The Ohio Edison Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Electric Company (Penelec), Metropolitan Edison Company (Met-Ed), Pennsylvania Power Company (Penn Power), West Penn Power,

**Jersey Central Power & Light (JCP&L), Monongahela Power Company (Mon Power) and The Potomac Edison Company.**

**FirstEnergy Solutions family of companies owns a fleet of 31 plants- controlling approximately 20,000 megawatts of capacity. FES has adequate capacity to serve the entire load required for the aggregation program.**

**Through governmental aggregation, FirstEnergy Solutions currently supplies electricity to over 1,400,000 residential and small commercial accounts in more than 400 communities. FirstEnergy Solutions has provided governmental aggregation services to communities for more than 10 years.**

**With FirstEnergy Solutions, implementing a governmental aggregation program is simple. With more than a decade of experience in managing aggregation programs, FirstEnergy Solutions has developed a time-tested, efficient and effective process.**

-Identify key management members and list experience:

**Please see Attachment D: Key Management Member Biographies**

-Identify the staff to be assigned to the Village Program and list experience:

**Please see Attachment E: Resume**

-Please list out any exceptions or alternate options to those proposed in this RFP:

**The following are FirstEnergy Solutions exceptions or alternate options to those proposed in this RFP:**

Supplier reserves the right to negotiate the terms of the Master Agreement after being selected the winning bidder in the RFP. Such negotiated Master Agreement would, upon execution, govern the contractual relationship of the parties. The following exceptions to the proposed Master Agreement identify some of the main issues that need to be negotiated but there are other items not listed here that may need to be negotiation as well.

Throughout the proposed Master Agreement there are references to multiple communities (Downer's Grove and Westmont; or Municipalities) (see Article 2 Paragraph 26) and the Master Agreement should be between the Supplier and a single community such that each community have its own agreement. All such references should be corrected.

Paragraph 4.1.1.4.2. Aside from the Municipality or Participating Customers, Supplier should not otherwise be prohibited from pass through costs to any other person or entity if it is able to do so. Language needs to reflect this.

Paragraph 4.1.2 should be changed to read as follows: Pricing. Except as provided in Section 4.1.3 of this Agreement, the Supplier shall receive the Price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation, except that the Supplier may impose an early termination fee on Withdrawing Customers pursuant to Section 4.3.56 of this Agreement which fee shall not exceed \$50.00 per customer account. The Municipality acknowledges

**that the Price does not include sales or other consumer-based taxes applicable to Participating Customers or other taxes that are not applicable to the Supplier.**

Paragraph 4.1.3 should be changed to read as follows: Pricing Guarantee. If the rates for Tariffed Service to a particular rate class are set below the Price during the Term of this Agreement, Supplier shall, within ~~fivethirty~~ (530) business days from the date on which the rates for Tariffed Service are set below the Price during the Term of this Agreement, either (a) provide the Services to Participating Customers in such class at a price equal to ~~or less than~~ the rate for Tariffed Services, or (b) after taking all steps necessary to return all Participating Customers to the Electric Utility, ~~and terminate this Agreement~~ without damages or early termination fees to either Party. Notwithstanding the foregoing, termination under this Section 4.1.3 may be avoided if the Municipality determines that the Aggregation Program should remain in place at the Price without the need to match. In such an event, the Parties shall enter into a written agreement and the Municipality shall not waive any rights set forth herein by allowing the Price to remain in place without the need to match unless the Municipality specifically agrees in writing pursuant to its terms.

Paragraph 4.2.1.3 should be changed to read as follows: 4.2.1.3 Toll Free Number and Secure Website. In addition to receiving completed Opt-Out Notices from Eligible Customers by mail, the Supplier shall, at its own expense, provide, operate, and maintain a toll-free number and secure website for the use of Eligible Customers to opt out of the Program. The toll-free number ~~must~~ shall be operational during normal business hours and the secure website ~~must~~ shall be operational twenty four (24) hours a day, seven (7) days a week during the Opt-Out Period. The Opt-Out Notices ~~must~~ shall prominently include both the toll-free number and the internet address of the secure website. Supplier will be ~~shall~~ support Spanish speaking residents and customers with disabilities ~~to the satisfaction of the Municipality~~ in a commercially reasonable manner.

Paragraph 6.1 should be changed to read as follows: Municipality's General Remedies. In addition to every other right or remedy provided to the Municipality under this Agreement, if the Supplier fails to comply with any of the provisions of this Agreement (for reason other than a Force Majeure Event, as defined in Section 7.1. below, pursuant to Section 7.1 of this Agreement or a Regulatory Event, as defined in Section 7.2 below, pursuant to Section 7.2 of this Agreement, the Municipality may give notice to the Supplier specifying that failure. The Supplier shall thereafter have fifteen (15) calendar days to take all necessary steps to comply fully with this Agreement, unless (a) this Agreement specifically provides for a shorter cure period or (b) an imminent threat to the public health, safety, or welfare arises that requires a shorter cure period, in which case the notice must specify the cure period, or (c) compliance cannot reasonably be achieved within 15 calendar days but the Supplier promptly commences a cure and diligently pursues the cure to completion. If the Supplier fails to comply within the applicable cure period, or a shorter time if an imminent threat, or if the Supplier fails to promptly commence a cure and diligently pursue the cure to completion, then the Municipality, subject to the limits of applicable federal or State of Illinois law, may take any one or more of the following actions:

Paragraph 6.2 should have the following sentence inserted at the end of the paragraph: Supplier shall not be responsible to any Participating Customer for any damages or penalties resulting from the return to Tariffed Service, including claims relating to the Tariffed Service price being higher than the Price herein.

Paragraph 7.1 should be changed to read as follows: Force Majeure Events. The Supplier shall not be held in default under, or in noncompliance with, the provisions of the Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by a "Force Majeure Event," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, or labor disputes, or other event that is reasonably beyond the Supplier's ability to anticipate or control. Noncompliance or default attributable to a Force Majeure Event shall be corrected within a reasonable amount of time after the Force Majeure Event has ceased.

Paragraph 7.2 should be inserted to read as follows:

**7.2 Regulatory Event.** The following shall constitute a "Regulatory Event":

- a. Illegality. It becomes unlawful for a Party to perform any obligation under this Agreement due to the adoption of, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.
- b. Adverse Government Action. A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially and adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determines to be unreasonable or (C) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure Event.
- c. New Charges. Any material increase in generation, energy, or utility taxes or charges enacted and effective after the Effective Date of this Agreement. The imposition of such tax or charge after the Effective Date of this Agreement is not subject to automatic pass-through in Price, but would only constitute a Regulatory Event if the imposition of the charge materially and adversely affects Supplier's ability to perform.
- d. Occurrence of Regulatory Event. Within ten (10) days of the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties shall enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to this Agreement, within thirty (30) days or such other period as the Parties may agree in writing, the adversely affected Party shall have the right, upon ten (10) days prior written notice, to terminate and close out its obligations under this Agreement.

Paragraph 8.1 should be changed to read as follows: Indemnification. The Supplier shall indemnify and hold harmless the Municipalities, their officers, employees, agents, ~~volunteers,~~ and attorneys, from and against any third party injuries, claims, demands, judgments, damages, losses and expenses of any kind, including reasonable attorney's fees and costs of suit or defense, arising from the Supplier's provision of the Services, except to the extent caused by the sole negligence of the Municipality. The

**Municipalities shall provide the Supplier with timely written notice of its obligation to indemnify and defend the Municipalities after the Municipalities' receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Supplier and/or the Municipalities. Nothing herein shall be construed to limit the Supplier's duty to indemnify the Municipalities by reference to the limits of insurance coverage described in this Agreement. In the event any such claim or demand is made, the Municipalities shall be permitted to retain its choice of counsel, to be paid for by the Supplier, and the Municipalities shall have the right to conduct and direct its own defense.**

**Paragraph 10.4 needs to be changed so that in the event of any inconsistency between the terms herein and the Terms and Conditions of the RFP as follows: “. . . the provisions of the ~~Terms and Conditions of the RFP~~ Master Agreement shall control.”**

**Attachment A:**

**FirstEnergy Solutions Certificate of Service Authority  
and State of Illinois Business License**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

FirstEnergy Solutions Corp. :  
 :  
Application for Certificate of : 08-0142  
Service Authority under Section :  
16-115 of the Public Utilities Act. :

ORDER

By the Commission:

**I. PRELIMINARY MATTERS**

On February 26, 2008, FirstEnergy Solutions Corp. ("Applicant" or "FirstEnergy") filed a verified application with the Illinois Commerce Commission ("Commission") requesting a certificate of service authority in order to become an alternative retail electric supplier ("ARES") in Illinois pursuant to Section 16-115 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., and 83 Ill. Adm. Code 451 ("Part 451"). Applicant submitted its certificate of publication showing that on March 5, 2008, proper notice of the application was published in the official State newspaper. On March 10, 2008, the Administrative Law Judge requested clarification of certain matters contained in the application. Applicant filed a verified response to the Administrative Law Judge's ruling on March 17, 2008.

**II. BACKGROUND AND AUTHORITY SOUGHT BY APPLICANT**

In this proceeding, Applicant seeks authority to sell electricity and power to residential and nonresidential customers in the service areas of Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Company d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP.

**III. REQUIREMENTS FOR ALL APPLICANTS UNDER SECTION 16-115(d) OF THE ACT**

Applicant is a corporation organized under the laws of Ohio. Applicant does not intend to install, operate, or maintain generation, transmission, or distribution facilities within the State of Illinois. Therefore, no demonstration of compliance with the requirements of Section 451.20(f) (2) has been made and Applicant's employees are not permitted to perform such functions, and other entities are not permitted to perform such functions pursuant to contractual arrangements with Applicant.

Applicant offers a range of energy-related products and services, including the sale of electric generation and energy planning and procurement related products and



services. Applicant is licensed to provide competitive retail electric generation services to commercial and industrial customers in Michigan, Ohio, Pennsylvania, Maryland and New Jersey and serves residential customers in Ohio and Pennsylvania. Applicant currently supplies electricity to more than 300,000 accounts. Applicant says its energy consulting division manages the energy and procurement needs for more than 120,000 accounts.

Applicant has certified that it will comply with all applicable regulations; that it will provide service only to retail customers eligible to take such services; that it will comply with informational and reporting requirements established by Commission rule; that it will comply with informational and reporting requirements pursuant to Section 16-112 of the Act; and that it will comply with all other applicable laws, regulations, terms, and conditions required to the extent they have application to the services being offered by an ARES. Additionally, Applicant has agreed to submit good faith schedules of transmission and energy in accordance with applicable tariffs. Applicant has agreed to adopt and follow rules relating to customer authorizations, billing records, and retail electric services and agrees to retain requests for delivery services transmitted to utilities for a period of not less than two calendar years after the calendar year in which they are created. Applicant has agreed to adopt and follow rules and procedures to preserve the confidentiality of its customers' data. Applicant indicates that it plans to serve the entire geographic area of each utility for which it seeks authority to serve.

Applicant certifies that any marketing materials that make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that it is offering or selling to the customer. Applicant also certifies that before any customer is switched from another supplier, it shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer. Applicant further certifies that it will provide documentation to the Commission and to customers that substantiates any claims made regarding the technologies and fuel types used to generate the electricity offered or sold to customers. Applicant commits to provide to its customers itemized billing statements that describe the products and services provided to the customer and their prices; and an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer.

Applicant certifies that it will include materials comprising the consumer education program pursuant to Section 16-117 of the Act with all initial mailings to potential residential and small commercial retail customers and before executing any agreements or contracts with such customers. Applicant certifies that it will provide consumer education program materials pursuant to Section 16-117 of the Act at no charge to residential and small commercial retail customers upon request. Applicant certifies that it will provide to residential and small commercial retail customers on a semiannual basis information on how to obtain a list of alternative retail electric suppliers that have been found in the last 3 years by the Commission to have failed to

provide service in accordance with the terms of their contracts pursuant to Section 16-117(g) (4) (C) of the Act.

Pursuant to the requirements of Section 451.50 of Part 451, Applicant provided a License or Permit Bond in the amount of \$300,000 issued by a qualifying surety authorized to transact business in Illinois. Attachment C to the application is a copy of the required License or Permit Bond.

#### **IV. FINANCIAL, TECHNICAL, AND MANAGERIAL REQUIREMENTS OF SECTION 16-115**

Applicant asserts that it meets the financial qualifications set forth in Section 16-115 (d)(1). In its application, for purposes of compliance with the provisions of Section 451.320(a)(1), Applicant asserts that it maintains at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor. Applicant provided documents supporting Applicant's assertion it complied with the financial requirements in Part 451.

Applicant represents that it meets the technical and managerial qualifications set forth in Section 16-115(d)(1) and Sections 451.330 and 451.340. Applicant identified the personnel who purportedly satisfy the criteria and provided biographical information for these individuals. Applicant indicates that it will provide a scheduling facility with 24-hour manned operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

Having reviewed the information submitted by Applicant, the Commission concludes that Applicant meets the financial, technical, and managerial qualifications set forth in Section 16-115(d)(1) of the Act and Subpart D of Part 451.

#### **V. COMMISSION CONCLUSION AND CERTIFICATE OF SERVICE AUTHORITY**

The Commission has reviewed the application and attachments along with the supplementary information provided by Applicant regarding the technical, financial, and managerial requirements and all other requirements of the Act and Part 451 and finds that the Applicant sufficiently demonstrates compliance with the requirements.

The Commission concludes, therefore, that the application for certification as an ARES should be granted and that the certificate should read as follows:

#### CERTIFICATE OF SERVICE AUTHORITY

IT IS CERTIFIED that FirstEnergy Solutions Corp. is granted service authority to operate as an Alternative Retail Electric Supplier as follows:

**SERVICES TO BE PROVIDED:** The sale of electricity and power.

**CUSTOMERS TO BE SERVED:** All eligible residential and nonresidential retail customers.

**GEOGRAPHIC REGION(S) SERVED:** The service areas of Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP.

## **VI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) Applicant, FirstEnergy Solutions Corp., a business organized under the laws of Ohio and authorized to do business in Illinois, seeks authority to become an ARES under Section 16-115 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact, as required by Section 16-115(d)(1) of the Act;
- (4) Applicant has demonstrated that it possesses sufficient technical, financial, and managerial resources and abilities to provide power and energy to eligible residential and nonresidential retail customers throughout the areas certified herein;
- (5) Applicant has complied with Section 16-115(d)(1) through (4) and (8) of the Act and 83 Ill. Adm. Code 451; and
- (8) FirstEnergy Solutions Corp. should be granted a certificate of service authority to operate as an alternative retail electric supplier in those service areas identified in Section V of this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that FirstEnergy Solutions Corp. is hereby granted the Certificate of Service Authority set out in Section V of this Order, subject to the conditions contained in this Order.

IT IS FURTHER ORDERED that FirstEnergy Solutions Corp. shall comply with all applicable Commission rules and orders now and as hereafter amended.

08-0142

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 9th day of April, 2008.

(SIGNED) CHARLES E. BOX

Chairman



594723-10 (Am)

# State of Illinois Office of The Secretary of State

Whereas, APPLICATION FOR CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE OF FIRSTENERGY SERVICES CORP. INCORPORATED UNDER THE LAWS OF THE STATE OF OHIO HAS BEEN FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE BUSINESS CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1984.

Now Therefore, I, Jesse White, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate and attach hereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, at the City of Springfield, this 22ND day of FEBRUARY A.D. 2000 and of the Independence of the United States the two hundred and 24TH



C-2123

*Jesse White*

Secretary of State

BOX 314

**Attachment B:**

**Retail Electric Supplier Agreement**

TO: Cindy Miszuk  
FirstEnergy Solutions  
341 White Pond Drive  
Akron, OH 44320

FROM: Mark Jantze  
ComEd-ESSD

SUBJECT: Executed RES Agreements

DATE: November 4, 2008

Cindy,

Enclosed are the ComEd RES and EDI Agreements for your files.  
If there are any questions, please give me a call at 630-684-2946.

Thanks,



Mark

## RETAIL ELECTRIC SUPPLIER AGREEMENT

This Retail Electric Supplier Agreement (the "Agreement"), dated as of October 21, 2008 (the "Effective Date") is entered into by and between Commonwealth Edison Company (the "Company") and FirstEnergy Solutions Corp. the "Retail Electric Supplier").

### RECITALS

A. The Company is required to offer, as tariffed services, delivery services in accordance with Article XVI of the Public Utilities Act (such Act, as it may be amended from time to time, the "Act").

B. The Company has filed with the Illinois Commerce Commission (the "ICC"), and the ICC has approved, (i) Rate RESS7-Retail Electric Supplier Service 2007 (such Rate, as it may be amended from time to time, "Rate RESS7"), (ii) Rate RDS-Retail Delivery Service (such Rate, as it may be amended from time to time, "Rate RDS"), (iii) Rider SBO7-Single Bill Option 2007 (such Rider, as it may be amended from time to time, "Rider SBO7"), (iv) Rider PPO-MVM - Power Purchase Option (Market Value Methodology) (such Rider, as it may be amended from time to time, "Rider PPO-MVM"), (v) Rider TS-CPP - Transmission Service (Competitive Procurement Process) (such Rider, as it may be amended from time to time, "Rider TS-CPP"), (vi) General Terms and Conditions, and (vii) all other applicable rates, riders and tariffs of the Company on file with the ICC that apply to Retail Customers, as such term is defined in the Act, and the Retail Electric Supplier (the foregoing documents, as they may be amended from time to time, collectively the "State Tariffs").

C. The Federal Energy Regulatory Commission ("FERC") has accepted open access transmission tariffs governing transactions over the transmission facilities located in the Company's service territory (such tariffs, as the same may be amended from time to time, together with any other applicable tariff on file with the FERC governing transactions over the transmission facilities located in the Company's service territory, the "Federal Tariff").

D. Each of the parties to this Agreement is willing to undertake their respective applicable obligations set forth in the Act, the State Tariffs, the Federal Tariff and this Agreement.

### AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Definitions. Certain terms used herein are defined in Exhibit A.
2. Services. (a) Each of the Company and the Retail Electric Supplier hereby agree to perform and satisfy all obligations which apply to it, with respect to the Designated Retail



Customers and the Company's Delivery Services to such Designated Retail Customers, which arise under the Act, the State Tariffs and the Federal Tariff.

(b) Pursuant to the terms of the Act, the State Tariffs, the Federal Tariff, and this Agreement, the Company will deliver electric power and energy sold to the Designated Retail Customers by the Retail Electric Supplier.

(c) The Company shall provide Delivery Services to the Designated Retail Customers, at the points of service, identified by the Retail Electric Supplier on notices containing the information required in Rates RDS and RESS7 and provided by the Retail Electric Supplier to the Company from time to time in accordance with Rates RDS and RESS7. Such Delivery Services shall commence on the date determined in accordance with Rate RDS.

(d) (i) The Company shall cease to provide Delivery Services to a Designated Retail Customer pursuant to this Agreement, and such customer shall no longer be a Designated Retail Customer for purposes of this Agreement, if the Retail Electric Supplier either: (A) by notice to the Company in accordance with Rates RDS and RESS7 notifies the Company that such Designated Retail Customer is no longer to purchase electric power and energy from the Retail Electric Supplier; or (B) ceases to take service under Rate RESS7.

(ii) The Company shall also cease to provide Delivery Services to a Designated Retail Customer pursuant to this Agreement, and such customer shall no longer be a Designated Retail Customer for purposes of this Agreement, if (A) the Company receives an authorization from a different ARES or Illinois electric public utility indicating that such Designated Retail Customer has authorized such ARES or public utility to provide electric power and energy supply services to such Designated Retail Customer, or (B) the Company receives an authorization that such Designated Retail Customer has elected pursuant to Rate RDS to return to the Company's bundled utility tariffed service or service under Rider PPO-MVM, or (C) either the Company or the Retail Electric Supplier terminates this Agreement pursuant to Section 8, or (D) such Designated Retail Customer ceases to do business at the location served by the Company or sells all or substantially all of its assets at such location to another person or entity.

(iii) The date on which the Company shall cease to provide Delivery Services to a Designated Retail Customer pursuant to this Section 2(d) shall be the date determined in accordance with Rate RDS.

(e) The Retail Electric Supplier shall deliver to the Company (i) the electric power and energy to be delivered to the Designated Retail Customers that agree to purchase electric power and energy from the Retail Electric Supplier, plus (ii) losses on the transmission facilities serving the Company's service area as described in the Federal Tariff, plus (iii) losses on the Company's distribution facilities as described in Rate RDS.

(f) The Retail Electric Supplier shall comply with the Company's interconnection requirements as applicable and set forth in the Company's "The Blue Book - Guidelines for Interconnection of Generation to the ComEd System," or the "The DG Book -

Guidelines for Interconnection of Distributed Generation to the ComEd System”, and with applicable regulations of the FERC and the ICC governing interconnection, in each case, as they may be amended from time to time, and any and all applicable interconnection agreements by entities with functional control of the transmission or distribution facilities within the Company’s service territory.

3. Federal Tariff. The Retail Electric Supplier must be a Transmission Customer for purposes of the Federal Tariff. The Retail Electric Supplier shall execute and deliver to the provider of transmission services in the Company’s service territory (the “Transmission Provider”) all applications, agreements and other documents required by the Federal Tariff and shall deliver copies thereof to the Company.

4. Reliability; Scheduling. (a) The Retail Electric Supplier shall comply with all applicable and appropriate federal, state, regional and industry rules, policies, practices, procedures and tariffs for the use, operation, maintenance, safety, integrity, and reliability of the interconnected electric transmission system (including the applicable and appropriate rules and operating guidelines and procedures of the regional or national electric reliability council(s) or organization(s) and their successor and the OASIS reservation process) and shall agree to submit good faith schedules of transmission and energy in accordance with applicable tariffs.

(b) The outage information provided by the Company on its outage screen on its Internet website is intended to provide the Retail Electric Supplier with information concerning the general geographic location of outages on the Company’s distribution system. It is the responsibility of the Retail Electric Supplier to verify whether its Designated Retail Customers are or are not actually receiving electric power and energy, and to adjust its schedules accordingly. Under no circumstances will the Company be responsible for identifying individual Designated Retail Customers without electric power and energy.

5. Electronic Data Interchange (“EDI”) System. The Retail Electric Supplier shall execute and deliver to the Company the Company’s standard EDI Agreement and shall thereafter comply with the terms of such agreement.

6. Retail Customer Billing. (a) If the Retail Electric Supplier elects to send a single bill to any Designated Retail Customers for its services and the Delivery Services provided by the Company, each of the Company and the Retail Electric Supplier shall execute and deliver to the other party the Company’s Rider SBO7 Contract Addendum.

(b) If the Retail Electric Supplier elects to send a single bill to any Designated Retail Customers for its services and the Delivery Services provided by the Company, then the Retail Electric Supplier shall indicate such election in the Direct Access Service Requests (“DASRs”) for the Designated Retail Customer that are identified in such DASRs.

(c) If the Retail Electric Supplier elects to send a single bill to any Designated Retail Customers for its services and the Delivery Services provided by the Company, the Retail Electric Supplier shall remit payments due the Company from such Designated Retail Customers

in accordance with Rider SBO7 and the Remittance Option Selection designated by the Retail Electric Supplier on the Rider SBO7 Contract Addendum described in Section 6(a) above.

(d) If the Retail Electric Supplier elects to send a single bill to Designated Retail Customers for its services and the Delivery Services provided by the Company, the Company shall be entitled to disconnect any Designated Retail Customer that fails to pay for tariffed services in the same manner that the Company would be entitled if the Company had billed for the services itself.

7. Payment. (i) The Retail Electric Supplier shall pay to the Company (A) all fees, charges and rates set forth in Rate RESS7, at the times set forth in Rate RESS7, which are to be paid to the Company by the Retail Electric Supplier; plus (B) all fees, charges and rates set forth in any other applicable rate, rider or tariff (as the same may be amended, deleted or added from time to time), at the times set forth in such rate, rider or tariff, which are to be paid to the Company by the Retail Electric Supplier.

(ii) The Company shall bill the Retail Electric Supplier for such fees, charges and rates in accordance with Rate RESS7 and other applicable rates, riders and tariffs (as the same may be amended, deleted or added from time to time).

8. Term; Termination. (a) The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of:

(i) the date which is 24 months after the Effective Date; provided that, unless either party provides 60 days' prior written notice to the other of its determination that this Agreement shall terminate on such date (or at the end of any renewal term), this Agreement shall automatically be renewed for a period of 12 months;

(ii) the date terminated pursuant to Section 8(b).

(b) The parties may terminate this Agreement as follows:

(i) The Retail Electric Supplier shall have the right to terminate this Agreement, and to discontinue service hereunder and all other services from the Company, pursuant to the provisions of the section of Rate RESS7 entitled "Term of Contract and Termination Provisions."

(ii) The Company shall have the right to terminate this Agreement, and to discontinue providing service hereunder and all other services to the Retail Electric Supplier, pursuant to the provisions of the section of Rate RESS7 entitled "Term of Contract and Termination Provisions."

(c) Upon termination or expiration of this Agreement:

(i) all obligations of the parties hereunder (including the Company's obligation to provide Delivery Services to the Designated Retail Customers pursuant to this

Agreement) shall terminate, except for those obligations under the State Tariffs, the Federal Tariff or this Agreement which expressly are to be performed after expiration or termination of this Agreement;

(ii) the requirement to pay any and all unpaid fees and charges shall survive termination or expiration of this Agreement;

(iii) the Retail Electric Supplier shall submit notice to the Company in accordance with Rates RDS and RESS7 notifying the Company that the Designated Retail Customers will no longer purchase electric power and energy from the Retail Electric Supplier, which notice shall be effective on or prior to the effective date of the termination or expiration of this Agreement and shall be supplied for each Designated Retail Customer for which it has heretofore been providing electric power and energy supply services under this Agreement.

9. Certifications. (a) The Retail Electric Supplier hereby certifies and warrants to the Company that:

(i) the Retail Electric Supplier is either (A) an Alternative Retail Electric Supplier with a certificate of service authority issued by the ICC in accordance with 83 Illinois Administrative Code Part 451 and Sections 16-115 and 16-115A of the Act, or (B) an Illinois electric utility as defined in the Section 16-102 of the Act and in compliance with Sections 16-115A and 16-116 of the Act;

(ii) the Retail Electric Supplier has performed or satisfied each of the Prerequisites for Service set forth in Rate RESS7;

(iii) the information set forth in the Retail Electric Supplier's application to the ICC with respect to the Retail Electric Supplier, is true and correct;

(iv) (A) all Designated Retail Customers of the Retail Electric Supplier: (x) shall be entitled to receive Delivery Services pursuant to Section 16-104 of the Act and Rate RDS, and (y) shall have delivered to the Retail Electric Supplier written verifiable authorization as required by Section 16-115A(b) of the Act, and (B) such authorization authorizes the Retail Electric Supplier to provide electric power and energy to such customer; and

(v) the Retail Electric Supplier is a Transmission Customer under the Federal Tariff and has submitted to the Transmission Provider the completed application, any agreement and any other document required by the Federal Tariff and has delivered copies thereof to the Company.

(b) Each party represents and warrants that (i) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or other action by such party; (iii) this Agreement has been duly executed and

delivered; and (d) this Agreement constitutes such party's legal, valid and binding obligation, enforceable against such party in accordance with its terms.

10. Confidentiality

(a) Neither party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such party, without the express prior written consent of the other party. As used herein, the term "Confidential Information" shall include, but not be limited to, (i) all business, financial, and commercial information pertaining to the parties, suppliers for either party, personnel of either party, and any trade secrets, (ii) unless the Designated Retail Customer otherwise agrees, all business, financial and commercial information pertaining to the Designated Retail Customer, the demand and energy of the Designated Retail Customer, and the charges to the Designated Retail Customer, and (iii) other information of a similar nature, in each case whether written or in intangible form. Confidential Information shall not include information known to either party prior to obtaining the same from the other party, information in the public domain, or information obtained by a party from a third party who did not, directly or indirectly, receive the same from the other party to this Agreement or from a third party who was not under an obligation of confidentiality to the other party to this Agreement, or information developed by either party independent of any Confidential Information. The receiving party shall use reasonable care to prevent unauthorized use or disclosure of such Confidential Information.

(b) Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (i) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (ii) prior to such disclosure, to the extent lawful and practicable, the other party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

(c) The provisions of this Section 10 shall survive the termination of the Designated Retail Customer's status as a Designated Retail Customer and the expiration or termination of this Agreement.

11. Notices. (a) Except as specified in Rates RDS and RESS7, all notices under this Agreement (other than invoices for amounts due the Company under this Agreement) must be in writing and sent via United States registered mail; prepaid certified mail, return receipt requested; courier or facsimile; or may be hand delivered to the respective party at its address set forth below. Notices will be effective on the date received. Notices sent by United States registered mail, certified mail, courier or hand delivery will be deemed received on the date of delivery; notices sent by facsimile will be deemed received on the date transmitted:

To the Company: Exelon Business Service Company  
Legal Services  
10 S. Dearborn  
Chicago, Illinois 60603  
Facsimile No: 312-394-3950

with a copy to:

Electric Supplier Services Manager  
Commonwealth Edison  
1919 Swift Drive  
Oak Brook, Illinois 60523  
Facsimile No: 630-684-3395

To the Retail Electric Supplier:

*FirstEnergy Solutions Corp.*  
*341 White Pond Drive*  
*Okron, Ohio 44320*

All amounts due to the Company under this Contract must be sent either electronically as described in the Electronic Billing section of the Company's General Terms and Conditions or via United States mail to the address set forth below:

Commonwealth Edison Company  
Bill Payment Center  
Chicago, IL 60668-0001

(b) The address to which notices or invoices shall be mailed may be changed from time to time by either party by notice served as hereinabove provided.

(c) The Retail Electric Supplier shall designate on the Supplier Registration Form the person(s) to be contacted with respect to specific operational matters relating to Delivery Services. The Retail Electric Supplier shall be entitled to specify any change to such person(s) upon written notice to the Company.

(d) The Retail Electric Supplier shall notify the Company of any change in its name or in its ICC certification, in each case on or before the effective date of such change.

12. Meters. In the event that the Retail Electric Supplier rents one or more meters from the Company during the term of this Agreement for or with respect to one or more Designated Retail Customers, and if the Designated Retail Customer ceases taking electric power or service from the Retail Electric Supplier or this Agreement terminates, the Retail Electric Supplier shall either (a) pay the Company for the removal of such meters, or (b) continue to pay the Company the rentals for such meters until such meters are removed.

13. General. (a) This Agreement (i) may be executed in multiple counterparts, each of which shall be deemed an original and which, taken together, shall be deemed to express the single agreement of the parties; (ii) shall not be altered or amended except by an instrument in writing executed by authorized representatives of the parties; (iii) constitutes the entire agreement and merges and supersedes all prior agreements, understandings, and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement; (iv) is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns; (v) does not confer any rights upon any person other than the parties and their respective successors and permitted assigns; and (vi) shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws principles. Any provision of this Agreement which is prohibited or unenforceable in a specific situation in any jurisdiction shall not affect the validity or enforceability of: (a) that provision in another situation or in any other jurisdiction, or (b) the other provisions of this Agreement if such other provisions could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law. A waiver by either party of any default by the other party of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other provision of this Agreement, but shall apply solely to the instance to which the waiver is directed. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

(b) (i) Neither party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other party. No assignment of this Agreement shall relieve the assigning party of any of its obligations under this Agreement. Any assignment in violation of this Section 13(b) shall be void.

(ii) Notwithstanding the provisions of the foregoing Section 13(b), (A) either party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties and shall serve as the point of contact between its subcontractor and the other party. If either party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that party's obligations under this Agreement, and (B) the Retail Electric Supplier may, without the consent of the Company but with prior notice to the Company, assign this Agreement to another entity that (x) succeeds to all or substantially all of the assets and operations of the Retail Electric Supplier, and (y) satisfies and meets all the standards and requirements as set forth in this Agreement, the Act, the State Tariffs and the Federal Tariff.

(c) (i) Each party shall perform its obligations under this Agreement as an independent contractor.

(ii) Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be severable and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either party. Each party shall be liable individually and severally for its own obligations under this Agreement.

14. Other Terms. All provisions of the Act, the State Tariffs and the Federal Tariff shall apply to the Designated Retail Customers and the Delivery Services to be provided to such Designated Retail Customers. Without limiting the foregoing, if a matter or item is addressed in the Act, the State Tariffs or the Federal Tariff but is not specifically addressed herein, the treatment of such matter or item as set forth in the Act, the State Tariffs or the Federal Tariff shall apply. If a conflict exists or develops between the provisions of this Agreement (on the one hand) and the Act, the State Tariffs, or the Federal Tariff (on the other hand), then the provisions of the Act, the State Tariffs or the Federal Tariff shall prevail.

In Witness Whereof, the parties have executed this Agreement as of \_\_\_\_\_,

<b>FOR THE COMPANY:</b>	<b>FOR THE RETAIL ELECTRIC SUPPLIER:</b>
Date: <u>10/30/08</u>	Date: <u>October 21, 2008</u>
<u>William P. McNeil</u> Accepted By (Signature)	<u>Arthur W. Yuan</u> Accepted By (Signature)
<u>WILLIAM P. McNEIL</u> Print Name	<u>Arthur W. Yuan</u> Print Name
<u>Vice President, Energy Acquisition</u> Official Capacity (Authorization)	<u>Vice President, Sales &amp; Marketing</u> Official Capacity (Authorization)
	<u>FirstEnergy Solutions Corp.</u> Title & Company
	<u>yuana@fes.com</u> Email Address



## EXHIBIT A

Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

- (i) "ARES" shall have the meaning set forth in the Act.
- (ii) "DASR" shall have the meaning set forth in Rate RESS7.
- (iii) "Delivery Services" shall have the meaning set forth in the Act and Rate RDS.
- (iv) "Eligible Customer" shall have the meaning set forth in the Federal Tariff.
- (v) "Retail Customers" shall have the meaning set forth in the Act.
- (iv) "Designated Retail Customers" shall mean those Retail Customers eligible to take delivery services under Section 16-104 of the Act and who have been identified from time to time on unrescinded DASRs sent by the Retail Electric Supplier to the Company as Retail Customers who have agreed to purchase electric power and energy supply services from the Retail Electric Supplier (but excluding those Retail Customers deleted from time to time as described in Section 2(d)(i) and (ii)).

**Attachment C:**

**Sample Opt-Out Materials and Sample Terms and  
Conditions**

June XX, 2012

Dear City of XX Resident,

We are providing you the opportunity to join other residents to save money on the electricity you use. Savings are possible through municipal aggregation, where community officials bring community members together to gain group buying power for the purchase of electricity. This community is able to form an aggregation because voters approved the program in March 2012.

After researching competitive electricity pricing options for you, we have chosen FirstEnergy Solutions, one of the nation's largest electric suppliers, to provide you with savings on your electric generation.

**There is no cost for enrollment and you will not be charged a switching fee. You do not need to do anything to participate.**

As a member of this aggregation, you will automatically receive a price of X.XX cents per kilowatt-hour (kWh) for electric generation through MONTH 20XX, which means you will save approximately XX% over ComEd's current average residential generation rate of X.XX cents per kWh. Your savings will be on the generation portion of your bill; your distribution charges from the utility will not change as a result of your participation in this program.

You will begin to see your electric savings from FirstEnergy Solutions after your enrollment has been finalized – approximately 30 - 45 days, depending upon your meter read date. Of course, you are not obligated to participate in the City of XX electric municipal aggregation program. If you do not want to participate in this program, you have until MONTH XX, 2012 to return the attached "opt-out" form. However, if you want to be part of this savings program, simply do not respond.

After you become a participant in this municipal aggregation program, ComEd will send you a letter confirming your selection of FirstEnergy Solutions as your electric generation supplier. As required by law, this letter will inform you of your option to cancel your contract with FirstEnergy Solutions. Again, to remain in the City of XX electric municipal aggregation program, you don't need to take any action when this letter arrives.

Be assured that the reliability of your electric service will not change if you participate in this program. You will continue to receive only one monthly electric bill from ComEd. ComEd will continue to deliver your electricity, be responsible for maintaining the system that delivers power to your home and provide outage restoration. In addition, your utility will not be negatively affected by your choice to receive generation from FirstEnergy Solutions.

If you have any questions, please call FirstEnergy Solutions toll-free at 1-866-636-3749, Monday through Friday, 8 a.m. to 5 p.m. Although the City of XX is offering this program, we ask that you direct all your aggregation program questions to supplier that we selected.

Sincerely,

City of XX local officials

P.S. To receive these savings, **you should not respond.** Return the opt-out form only if you do not want to participate in the City of XX electric municipal aggregation program.

**OPT-OUT FORM – CITY OF XX RESIDENTIAL ELECTRIC MUNICIPAL AGGREGATION PROGRAM**

<p><b>Option 1: Do nothing and save.</b> If you want to participate in this program and save, you do not need to return this form. Your enrollment is automatic.</p>	<p><b>OR</b></p>	<p><b>Option 2: Opt out by returning this form.</b> If you do not want to participate in this program, you must return this form before the due date.</p>
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**Return this form only if you do not want to save money through the City of XX electric municipal aggregation program.**

I wish to opt out of this savings program. (Check box to opt out.)

Service address (City, state and zip): \_\_\_\_\_

Phone number: \_\_\_\_\_

Account holder's signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Mail by MONTH XX, 2012 to: City of XX Electric Municipal Aggregation Program, 341 White Pond Drive, Bldg. B-3, Akron, Ohio 44320**

## City of XX Electric Municipal Aggregation Program Frequently Asked Questions

### **What is aggregation?**

Under municipal aggregation, local officials bring citizens together to gain group buying power for the purchase of competitively priced electricity from an alternative retail electric supplier certified by the Illinois Commerce Commission.

### **How is the City of XX able to choose a certified electric generation supplier on my behalf?**

In March 2012, the City of XX residents voted to allow the City of XX to contract for an electric generation supplier on their behalf.

### **How will I know if I can save money under the City of XX electric municipal aggregation program?**

Under this program, you will receive a fixed price of X.XX cents per kilowatt-hour (kWh) for generation. As long as your Price to Compare is higher than this fixed price, then you are saving money.

### **What do I need to do if I *want* to be included in this municipal aggregation?**

You do not need to do anything to receive the discounted generation pricing under this program.

### **If I join the City of XX electric aggregation program, who will deliver my power, read my meter and respond to emergencies, such as power outages?**

Your local electric company will be responsible for the delivery of power to your home or business. Since your local electric utility still owns the wires and poles that deliver power to you, it will continue to read your meter and restore power after an outage.

### **Is your price fixed or does it vary?**

In this program, the discount you will receive is fixed, so your price will not change throughout the term of the agreement.

### **What does “opt out” mean?**

“Opt out” means that you can decide not to participate in this electric municipal aggregation program. By returning the opt-out form by the due date, you will not be enrolled in this savings.

### **What happens if I do not send in the opt-out form?**

If you do not return the opt-out form by the due date, you will be included in the City of XX’s municipal aggregation program and will begin receiving competitively priced electricity from FirstEnergy Solutions.

### **Can I opt out over the phone?**

No, if you want to opt out, you must mail in your completed opt-out form by the due date.

### **Can I leave the program at a later date?**

Yes, you may leave the program at any time.

### **What are my energy supply choices if I decide to opt out?**

You can stay with your current electric utility, which will continue to supply your electricity as it always has, or you can shop for an alternative generation supplier.

### **If I join the aggregation, can I stay on budget billing?**

Yes. Your budget billing will not be affected by your participation in this program.

### **Can I still have my payment automatically deducted from my checking account as I do now?**

Yes. How you pay your electric bill will not change.

### **Who is FirstEnergy Solutions?**

FirstEnergy Solutions Corp., provides competitive electric generation supply and other energy-related products and services to over 1.5 million customers, and is a licensed supplier in Illinois, Ohio, Pennsylvania, New Jersey, Maryland and Michigan.

### **What is the toll-free number for questions?**

For answers to your questions, please call 1-866-636-3749, Monday through Friday, 8 a.m. to 5 p.m.

June XX, 2012

Dear City of XX Business,

We are providing you the opportunity to join other small businesses to save money on the electricity you use. Savings are possible through municipal aggregation, where community officials bring community members together to gain group buying power for the purchase of electricity. This community is able to form an aggregation because voters approved the program in March 2012.

After researching competitive electricity pricing options for you, we have chosen FirstEnergy Solutions, one of the nation's largest electric suppliers, to provide you with savings on your electric generation.

**There is no cost for enrollment and you will not be charged a switching fee. You do not need to do anything to participate.**

As a member of this aggregation, you will automatically receive a price of X.XX cents per kilowatt-hour (kWh) for electric generation, which means you will save approximately 20% over ComEd's current average residential generation rate of X.XX cents per kWh through July 2014. Your savings will be on the generation portion of your bill; your distribution charges from the utility will not change as a result of your participation in this program.

You will begin to see your electric savings from FirstEnergy Solutions after your enrollment has been finalized – approximately 30 - 45 days, depending upon your meter read date. Of course, you are not obligated to participate in the City of XX electric municipal aggregation program. If you do not want to participate in this program, you have until June XX, 2012 to return the attached "opt-out" form. However, if you want to be part of this savings program, simply do not respond.

After you become a participant in this municipal aggregation program, ComEd will send you a letter confirming your selection of FirstEnergy Solutions as your electric generation supplier. As required by law, this letter will inform you of your option to cancel your contract with FirstEnergy Solutions. Again, to remain in the City of XX electric municipal aggregation program, you don't need to take any action when this letter arrives.

Be assured that the reliability of your electric service will not change if you participate in this program. You will continue to receive only one monthly electric bill from ComEd. ComEd will continue to deliver your electricity, be responsible for maintaining the system that delivers power to your home and provide outage restoration. In addition, your utility will not be negatively affected by your choice to receive generation from FirstEnergy Solutions.

If you have any questions, please call FirstEnergy Solutions toll-free at 1-866-636-3749, Monday through Friday, 8 a.m. to 5 p.m. Although the City of XX is offering this program, we ask that you direct all your aggregation program questions to supplier that we selected.

Sincerely,

City of XX local officials

P.S. To receive these savings, **you should not respond**. Return the opt-out form only if you do not want to participate in the City of XX electric municipal aggregation program.

**OPT-OUT FORM – CITY OF XX RESIDENTIAL ELECTRIC MUNICIPAL AGGREGATION PROGRAM**

<p><b>Option 1: Do nothing and save.</b> If you want to participate in this program and save, you do not need to return this form. Your enrollment is automatic.</p>	<p><b>OR</b></p>	<p><b>Option 2: Opt out by returning this form.</b> If you do not want to participate in this program, you must return this form before the due date.</p>
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**Return this form only if you do not want to save money through the City of XX electric municipal aggregation program.**

I wish to opt out of this savings program. (Check box to opt out.)

Service address (City, state and zip): \_\_\_\_\_

Phone number: \_\_\_\_\_

Account holder's signature: \_\_\_\_\_ Date: \_\_\_\_\_

## City of XX Electric Municipal Aggregation Program Frequently Asked Questions

### **What is aggregation?**

Under municipal aggregation, local officials bring citizens together to gain group buying power for the purchase of competitively priced electricity from an alternative retail electric supplier certified by the Illinois Commerce Commission.

### **How is the City of XX able to choose a certified electric generation supplier on my behalf?**

In April 2011, City of XX residents voted to allow the City of XX to contract for an electric generation supplier on their behalf.

### **How will I know if I can save money under the City of XX electric municipal aggregation program?**

Under this program, you will receive a fixed price of X.XX cents per kilowatt-hour (kWh) for generation. As long as your Price to Compare is higher than this fixed price, then you are saving money.

### **What do I need to do if I *want* to be included in this municipal aggregation?**

You do not need to do anything to receive the discounted generation pricing under this program.

### **If I join the City of XX electric aggregation program, who will deliver my power, read my meter and respond to emergencies, such as power outages?**

Your local electric company will be responsible for the delivery of power to your home or business. Since your local electric utility still owns the wires and poles that deliver power to you, it will continue to read your meter and restore power after an outage.

### **Is your price fixed or does it vary?**

In this program, the discount you will receive is fixed, so your price will not change throughout the term of the agreement.

### **What does “opt out” mean?**

“Opt out” means that you can decide not to participate in this electric municipal aggregation program. By returning the opt-out form by the due date, you will not be enrolled in this savings.

### **What happens if I do not send in the opt-out form?**

If you do not return the opt-out form by the due date, you will be included in the City of XX’s municipal aggregation program and will begin receiving competitively priced electricity from FirstEnergy Solutions.

### **Can I opt out over the phone?**

No, if you want to opt out, you must mail in your completed opt-out form by the due date.

### **Can I leave the program at a later date?**

Yes, but you will be subject to a \$50 cancellation fee per utility account from FirstEnergy Solutions if you cancel for any other reason but moving.

### **What are my energy supply choices if I decide to opt out?**

You can stay with your current electric utility, which will continue to supply your electricity as it always has, or you can shop for an alternative generation supplier.

### **If I join the aggregation, can I stay on budget billing?**

Yes. Your budget billing will not be affected by your participation in this program.

### **Can I still have my payment automatically deducted from my checking account as I do now?**

Yes. How you pay your electric bill will not change.

### **Who is FirstEnergy Solutions?**

FirstEnergy Solutions Corp., provides competitive electric generation supply and other energy-related products and services to over 1.5 million customers, and is a licensed supplier in Illinois, Ohio, Pennsylvania, New Jersey, Maryland and Michigan.

### **What is the toll-free number for questions?**

For answers to your questions, please call 1-866-636-3749, Monday through Friday, 8 a.m. to 5 p.m.

**Attachment D:**

**Key Management Member Biographies**

**Julie M. Hextell**

Senior Vice President, Retail Sales and Marketing

Julie M. Hextell is senior vice president, Retail Sales and Marketing, for FirstEnergy Solutions (FES), the competitive subsidiary of FirstEnergy Corp.

Prior to joining the company in September 2011, Julie was chief operating officer of SoCore Energy, a second-stage solar development company, responsible for developing strategic and tactical action plans and managing product and market development, quality assurance, construction, finance and legal.

Julie's retail energy experience began when she joined Constellation NewEnergy (CNE) in 1999 as an attorney. She subsequently held various management positions, including leading the Great Lakes and Mid Atlantic Regions as CNE's regional vice president.

From 2007-2010, she was senior vice president and chief marketing officer responsible for marketing, customer insight, strategic finance, market development, product development, technical sales and sales operations.

Julie graduated from Loyola University with a Bachelor of Arts Degree in history/political science and received a law degree from DePaul University College of Law.



**David E. Hennekes**

Vice President, Retail Marketing

David E. Hennekes is vice president, Marketing, for FirstEnergy Solutions (FES), the competitive subsidiary of FirstEnergy Corp.

Prior to joining the company in September 2011, David was vice president and general manager for the residential division at TXU Energy, responsible for determining consumer competitive strategies – including marketing, customer service, and profit and loss accountability – and leading the sales organization.

From 2000-2004, he was managing director of retail operations for Reliant Energy where he managed the accounts receivable portfolio, directed the call center, and shaped credit and payment processing policies. He also has worked with LG&E Energy Corp. and spent three years with the U.S. Peace Corps.

David earned a Bachelor of Business Administration Degree in accounting and an MBA from the University of Notre Dame.

**Gerard J. Bellitt**

Vice President, Sales  
FirstEnergy Solutions

Jerry Bellitt is vice president, Sales, for FirstEnergy Solutions (FES), the competitive subsidiary of FirstEnergy Corp.

He joined the company in 1998 as Major Account executive for FES, developing customized natural gas and electricity solutions for large commercial and industrial customers. In 2005 he was named director of Retail Sales, and since then FES has become the leading retail electric provider in Ohio and Pennsylvania and one of the top retailers in the country. He was promoted to his current position in February 2011.

From 1984 to 1998, Jerry worked for Ajax Magnethermic, including eight years as engineering manager. Prior to Ajax, he worked as a substation transformer design engineer for Westinghouse Electric.

Jerry earned a bachelor of engineering (electrical) degree from Youngstown State University, and in 1987 received his MBA from Youngstown State, with concentrations in management and finance.

## **Brenda S. Fargo**

Manager, Governmental Aggregation  
FirstEnergy Solutions Corp.

Brenda S. Fargo is the Manager of Governmental Aggregation for FirstEnergy Solutions (FES), the competitive subsidiary of FirstEnergy Corp.

Brenda joined the Ohio Edison in 1997 as a Major Account Executive and moved that year to FirstEnergy Services, later known as FirstEnergy Solutions, as a National Account Executive.

In 2000, she joined the Marketing Department to focus on developing and implementing a Governmental Aggregation program. During her time in the Marketing Group, Brenda built the government aggregation program to include over 41 communities and 500,000 customers. Currently, Brenda remains responsible for the Governmental Aggregation Program, which now serves over 1.4 million customers in 400 communities in Ohio and Illinois.

As a result of her work with the Governmental Aggregation Program, Brenda was the 2004 recipient of the Willard R. Holland Entrepreneurial Award. Brenda also was elected twice to Green City Council and served as Mayor of Green.

Brenda earned a bachelor of arts degree from The University of Akron.

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**Attachment E:**

**Resume**

**RICHARD OLSON**  
**1321 Oconto Court**  
**Naperiville, Illinois 60564**  
[rolson@fes.com](mailto:rolson@fes.com)

**SUMMARY:** A seasoned professional with unique and practical experience with a sound understanding of a diverse range of business, sales management, and sales applications, including mark analysis, business development, sales, service, marketing, team building, quality assurance, and technical knowledge from an engineering background. Proven ability to close new business and increase sales within an established accounts and mature territory. Self confident and poised in interactions across all business hierarchies; an effective presented and assertive negotiator.

**PROFESSIONAL EXPERIENCE:**

10/2010 – Present      **FIRSTENERGY SOLUTIONS**, Akron, Ohio

**Major Account Executive**

Responsible for the development, expansion and retention of commercial and governmental aggregation accounts in Illinois, Ohio, and other areas served by FirstEnergy Solutions.

06/2007 – 9/2010      **CONSTELLATION ENERGY**, Chicago, Illinois

**Great Lakes Business Development Manager**

Responsibilities included sales, performance, prospecting, forecasting, regional organization, discovering trends and strengthening customer relationships.

10/2006 – 6/2007      **BIMBA Manufacturing**, Monee, Illinois

**North American Business Development Manager**

Accountable for the development and direction of the sales team for North America Customer Designs Product Divisions. Responsibilities included all aspects of sales, evaluation, promotional programs, customer relationships and prospecting.

02/2011 – 07/2006      **ROLL MACHINING**, Romeoville, Illinois

**Worldwide Business Development Manager/President**

As a startup company, transformed an idea into a successful sales driven manufacturing/engineering company. Major areas of

responsibility and experience included strategy, sales, engineering, shop operations and administrative duties.

**EDUCATION:** Northern Illinois University, DeKalb, Illinois  
Bachelor of Science in Mechanical Engineering, 1992

**CERTIFICATIONS:** Microsoft Certified  
Tube and Pipe Organization (TPA)  
SME Society of Manufacturing Engineers

**V. PROPOSAL/CONTRACT FORM**

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

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

**PROPOSER:**

First Energy Solutions, Corp.  
Company Name

Date: 5-29-12

341 White Pond Dr., B-2  
Street Address of Company

rolson@fes.com  
Email Address

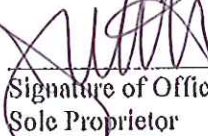
Akron, OH 44320  
City, State, Zip

Rick Olson  
Contact Name (Print)

630-428-1424  
Business Phone

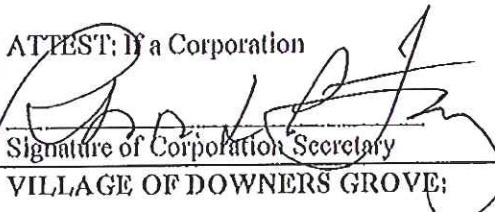
630-428-1424  
13-Hour Telephone

330-777-6529  
Fax

  
Signature of Officer, Partner or  
Sole Proprietor

Julie Hextell, Senior Vice President  
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

VILLAGE OF WESTMONT:

ATTEST:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Signature of Village Clerk

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



# 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.

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 or proposal 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:

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

*Brenda Fargo*  
Signature

Brenda FARGO  
Print Name

Proposer/vendor has contributed a campaign contribution to a current member of the Village Council 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



**MASTER POWER SUPPLY AGREEMENT**

**AGREEMENT BY AND BETWEEN THE VILLAGE OF DOWNERS GROVE (WESTMONT)**

**AND \_\_\_\_\_**

**TO PROVIDE FULL-REQUIREMENTS ELECTRICITY SUPPLY AND RELATED SERVICES FOR THE VILLAGE'S ELECTRIC AGGREGATION PROGRAM**

This Agreement ("Agreement"), is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") between the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation ("Municipality") and \_\_\_\_\_ ("Supplier") (each a "Party" and collectively, the "Parties").

**RECITALS**

A. The Municipality has established an Electricity Aggregation Program ("Program") pursuant to an aggregation ordinance, adopted on May 15, 2012 as Ordinance \_\_\_\_\_, ("Aggregation Ordinance") and the aggregation statute, 20 ILCS 3855/1-92, ("Aggregation Statute") and will conduct the Program as an opt-out program pursuant to the Aggregation Ordinance and the Aggregation Statute.

B. The Supplier has been selected by the Municipality pursuant to its response to the RFP, which RFP including the RFP response and RFP Package are incorporated into this Agreement as Exhibit A ("RFP Package").

C. The purpose of this Agreement is for the Supplier to provide the Full-Requirements Electricity Supply Services and the Program Implementation Services, as defined in Article 2 below, (collectively, the "Services") to all Eligible Customers, as defined in Article 2 below, who choose not to opt out of the Program throughout the Term of this Agreement at the Price set forth in Exhibit B.

D. Supplier acknowledges and agrees that it has all certifications, authorizations, qualifications, and approvals necessary pursuant to the Requirements of Law, as defined in Article 2 below, to sell Full-Requirements Electricity Supply to Eligible Customers pursuant to this Agreement, including without limitation that:

- a. Supplier is certified by the Illinois Commerce Commission as a Retail Electric Supplier, as defined in Article 2 below, and is authorized to sell Full-Requirements Electricity Supply to customers in the State of Illinois utilizing the existing transmission and distribution systems of ComEd, as defined in Article 2 below, within the service areas of ComEd;
- b. Supplier is currently registered with ComEd to serve residential and small commercial customers under Rate RESS - Retail Electric Supplier Service with Rider PORCB - Purchase of Receivables and Consolidated Billing; and
- c. Supplier has at least three (3) years continuous experience as a Retail Electric Supplier and has provided Full-Requirements Electricity Supply to at least twenty five thousand (25,000) residential and/or commercial customers.
- d. Supplier acknowledges and agrees that it will provide the Services, as defined in Article 2 below, including without limitation Full-Requirements Electricity Supply to all Participating Customers, as defined in Article 2 below, pursuant to the RFP Package, the RFP Response, this Agreement, and the Requirements of Law.

e. The Municipality desires to enter into this Agreement with Supplier for the provision by the Supplier of Full-Requirements Electricity Supply to all Eligible Customers pursuant to the Program.

## **AGREEMENT**

In consideration of the mutual covenants and agreements contained herein, the Municipality and the Supplier do hereby agree as follows:

### **ARTICLE 1 RECITALS**

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

### **ARTICLE 2 DEFINITIONS**

1. "Aggregate" means the total number of Eligible Customers that are within the jurisdictional boundaries of the Municipality
2. "RFP Package" means the Request for Proposals, including the RFP, Terms and Conditions, Detailed Specifications, Proposers Response to the RFP, Master Supply Agreement and the Plan of Operation and Governance all attached and incorporated herein as Exhibit A.
3. "Billing Services" means those services describe in Section 4.4 of this Agreement, including all subsections of Section 4.4.
5. "ComEd" means Commonwealth Edison.
6. "Compliance Services" means those s ervices identified in Section 4.5 of this Agreement.
7. "Confidential Information" is defined in Section 9.1 of this Agreement.
8. "Customer Information" means that certain information that the Electric Utility is required to provide to the corporate authorities of the Municipality pursuant to the Aggregation Statute, including without limitation those names and addresses and Electric Utility account numbers of residential and small commercial retail customers in the Aggregate area that are reflected in the Electric Utility's records at the time of the request.
9. "Data" is defined in Section 9.2 of this Agreement.
10. "Electric Utility" means ComEd.
11. "Eligible Customers" mean residential and small commercial electricity customers receiving Full-Requirements Electricity Supply within the Municipality who are eligible to participate in the Program pursuant to the Aggregation Statute and the Requirements of Law.
12. "Energy" means generated electricity.

13. "Enrollment Services" means those services described in Section 4.3 of this Agreement.
14. "Extended Term" is defined in Section 5.1 of this Agreement.
15. "Force Majeure Event" is defined in Section 7.1 of this Agreement.
16. "Full-Requirements Electricity Supply" means all services or charges necessary to provide a continuous supply of electricity to all Participating Customers, including, without limitation, Energy, capacity, losses, renewable portfolio standard ("RPS") charges, imbalances, load factor adjustments, transmission costs, congestion charges, marginal losses, ancillary services, taxes applicable only to the Supplier, and any additional necessary services or charges.
17. "Full-Requirements Electricity Supply Services" means those portions of the Services described in Section 4.1 of this Agreement.
18. "ICC" means the Illinois Commerce Commission.
19. "Independent System Operator" or "ISO" means that certain independent system operator for the Electric Utility established pursuant to Section 16-126 of the Public Utilities Act, 220 ILCS 5116-626.
20. "Power Supply Proposal" means the RFP process to be conducted by Belden Energy Solutions Inc. on behalf of the Municipality(ies) to identify the Supplier.
21. "New Customers" are defined in Section 4.3.9 of this Agreement.
22. "Opt-Out Notice" means the notices described in Section 4.2.1.1 of this Agreement and provided to Eligible Customers informing them of their ability to opt-out of the Program pursuant to the Requirements of Law:
23. "Opt-Out Period" means the time prior to the implementation of the Program during which Eligible Customers may choose not to participate in the Program pursuant to the Requirements of Law.
24. "Opt-Out Process" is defined in Section 4.2.1 of this Agreement.
25. "Participating Customers" means those Eligible Customers who do not opt out of the Program and are not Special Billing Customers, and New Customers.
26. "Plan of Operation and Governance" or "POG" means that certain Plan of Operation and Governance approved by Downers Grove on May 15, 2012 and Westmont on May 17, 2012, pursuant to the Aggregation Statute.
27. "Point of Delivery" means the point specified by the Electric Utility at which the Supplier must deliver the Full-Requirements Electricity Supply to the Electric Utility for distribution to Participating Customers.
28. "Price" means the fixed price expressed in cents per kilowatt hour at which the Supplier will provide the Services as set forth in Exhibit B to this Agreement.

29. "Program" means the electricity aggregation program operated by the Municipality in accordance with the Aggregation Statute and authorized by the Aggregation Ordinance, to aggregate residential and small commercial retail electrical loads located within the corporate limits of the Municipality for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Full-Requirements Electricity Supply and related Services.

30. "Program Implementation Services" means those portions of the Services described in Section 4.2 of this Agreement, including all subsections of Section 4.2.

31. "Requirements of Law" means the Aggregation Ordinance, the Aggregation Statute, the Plan of Governance, the rules and regulations of the ICC, the rules, regulations and tariffs applicable to the Electric Utility and the Independent System Operator, and all other federal, state, and local laws, orders, rules, and regulations.

32. "Retail Electric Supplier" or "RES" means an "alternative retail electric supplier" as that term is defined in Section 16-102 of the Public Utilities Act, 220 ILLS 5116-102.

33. "Services" means the Full-Requirements Electricity Supply Services, Program Implementation Services, Enrollment Services, Billing Services, and Compliance Services provided in Article 4 of this Agreement.

34. "Special Billing Customers" are defined in Section 4.3.8 of this Agreement.

35. "Supplier" means \_\_\_\_\_ or the lawful successor, transferee, or assignee thereof.

36. "Tariffed Service" means the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 at the rates established in ComEd's "Price to Compare" for the applicable rate class, as posted on the ICC website, which includes ComEd's electricity supply charge plus ComEd's transmission series charge, but does not include ComEd's purchased electricity adjustment.-

37. "Term" is defined in Section 5.1 of this Agreement.

38. "Withdrawing Customer" is defined in Section 4.3.6 of this Agreement.

### **ARTICLE 3 PROGRAM RESPONSIBILITIES**

#### **3.1 Municipality Responsibilities.**

3.1.1 Customer Information. The Municipality shall, with the assistance of the Supplier, pursuant to the Requirements of Law, obtain the Customer Information from ComEd.

3.1.2 Notices and Customer Information from ComEd. The Municipality shall promptly forward to Supplier the Customer Information received from ComEd and each Party will promptly provide to the other Party any notices received by that Party from ComEd concerning the accounts of Eligible or Participating Customers.

3.1.3 Submittals to ComEd. The Municipality shall, with the assistance of Supplier, submit to ComEd: (a) the "Government Authority Aggregation Form," (b) a list of Eligible Customers who are not Participating Customers because they have elected to opt-out of the Program, and (c) a list of all Participating Customers.

3.1.4 No Municipality Obligations to Provide Services. The Parties acknowledge and agree that the Municipality is not responsible to provide, and this Agreement shall not be construed to create any responsibility for the Municipality to provide, the Services to any person or entity, including without limitation the Supplier, the Electric Utility, the ISO, Eligible Customers, Special Billing Customers, or Participating Customers. The Supplier acknowledges and agrees that the Municipality is not responsible to provide, and shall not be liable to the Supplier or any Eligible Customer for any failure to provide, any Services pursuant to this Agreement.

3.1.5 No Municipality Financial Responsibility. The Parties acknowledge and agree that this Agreement does not impose or create, and shall not be construed to create, any financial obligation of the Municipality to any other person, entity, or any third party beneficiary to this Agreement, including without limitation the Supplier, the Electric Utility, the ISO, Eligible Customers, Special Billing Customers, or Participating Customers.

## 3.2 Supplier Obligations.

3.2.1 Provision of Services. The Supplier shall provide all of the Services described in Article 4 of this Agreement throughout the Term, including but not limited to the provision of sufficient Full-Requirements Electricity Supply to allow the Electric Utility to deliver and distribute uninterrupted electric service to all Participating Customers.

3.2.2 Compliance with the Requirements of Law. Supplier shall comply with all requirements of Law.

3.3 Supplier Press Releases. The Supplier may issue press releases concerning the Program that are approved in advance by the Municipality prior to issuance.

3.4 Supplier represents and warrants that all information provided to Municipality or any of its agents relating to this Agreement in any way shall be true and accurate in all respects at all times.

## **ARTICLE 4 SUPPLIER SERVICES**

4.1 Full Requirements Electricity Supply: The Supplier must supply the following Full-Requirements Electricity Supply Services as provided in this Section 4.1.

### 4.1.1 Scheduling, Transmission and Delivery of Full-Requirements Electricity Supply.

4.1.1.1 Generally. The Supplier shall take all actions necessary to arrange for the scheduling, transmission, and delivery of Full-Requirements Electricity Supply to the Electric Utility for distribution to all Participating Customers.

4.1.1.2 Scheduling. Supplier shall schedule the Full-Requirements Electricity Supply for distribution as required by the ISO and the Electric Utility.

4.1.1.3 Distribution and Transmission Rights. Supplier shall obtain all necessary distribution and transmission rights necessary for the delivery of the Full-Requirements Electricity Supply to the Electric Utility hereunder.

4.1.1.4 Transmission and Delivery to Electric Utility.

4.1.1.4.1 Transmission and Delivery. Supplier shall cause to be transmitted, and deliver to the Electric Utility at the Delivery Point, sufficient Energy to provide continuous Full-Requirements Electricity Supply to all Participating Customers. The Municipality acknowledges that the Electric Utility, and not the Supplier, is responsible for the distribution of the Full-Requirements Electricity Supply to the Participating Customers after delivery by the Supplier to the Delivery Point, and that Supplier does not take responsibility for the distribution of the Full-Requirements Electricity Supply to Participating Customers after the Supplier provides Full-Requirements Electricity Supply to the Point of Delivery.

4.1.1.4.2 Failure of Delivery. Supplier acknowledges and agrees that if the Supplier fails to provide the Full Requirements Electricity Supply to the Participating Customers pursuant to this Agreement, including without limitation if Supplier fails to schedule all or part of the Full-Requirements Electricity Supply for any Participating Customer, Supplier shall be solely responsible for any additional costs, charges, or fees incurred because of such failure, and shall not pass through any such additional costs, charges, or fees to any other person or entity, including but not limited to the Municipality or Participating Customers.

4.1.2 Pricing. Except as provided in Section 4.1.3 of this Agreement, the Supplier shall receive the Price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation, except that the Supplier may impose an early termination fee on Withdrawing Customers pursuant to Section 4.3.6 of this Agreement, which fee shall not exceed \$50.00 per customer.

4.1.3 Pricing Guarantee. If the rates for Tariffed Service to a particular rate class are set below the Price during the Term of this Agreement, Supplier shall, within five (5) business days from the date on which the rates for Tariffed Service are set below the Price during the Term of this Agreement, either provide the Services to Participating Customers at a price equal to or less than the rate for Tariffed Service, or return all Participating Customers to the Electric Utility, and terminate this Agreement pursuant to its terms.

4.2 Program Implementation Services. The Supplier must supply the following Program Implementation Services as provided in this Section 4.2:

4.2.1 Opt-Out Process. Supplier, at its sole cost and expense, shall, with the assistance of the Municipality, administer the process by which Eligible Customers are provided with the opportunity to opt-out of the Program prior to its implementation (the "Opt-Out Process"), including, but not limited to, the following:

4.2.1.1 Opt-Out Notices. Supplier, at its own expense, shall be fully responsible to prepare and mail form Opt-Out Notices to all Eligible Customers as required pursuant to the

Requirements of Law. Opt-Out Notices must include all information required pursuant to the Requirements of Law, including without limitation including the terms and conditions of participation in the Program, the cost to the Eligible Customers of Full- Requirements Electricity Supply under the Program, the methods by which Eligible Customers may opt out of the Program, and the length of the Opt-Out Period. The Opt-Out Notices must prominently include the toll-free telephone number and secure website described Section 4.2.1.3. The form and content of the Opt-Out Notices shall be approved by the Municipality prior to mailing by the Supplier. In addition to the Opt-Out Notices, the Supplier shall provide Participating Customers with terms and conditions for the provision of Full Requirements Electric Supply to those Participating Customers, which terms and conditions shall comply with and accurately reflect all of the requirements of this Agreement and the Requirements of Law.

4.2.1.2 Notices to Special Billing Customers. The Municipality shall provide notices to Special Billing Customers concerning the Program, the Price, the rates charged to Special Billing Customers under their existing service, and the opportunity for Special Billing Customers to opt in to the Program as provided in Section 4.3.8 of this Agreement.

4.2.1.3 Toll Free Number and Secure Website. In addition to receiving completed Opt-Out Notices from Eligible Customers by mail, the Supplier shall, at its own expense, provide, operate, and maintain a toll-free number and secure website for the use of Eligible Customers to opt out of the Program. The toll-free number shall be operational during normal business hours and the secure website shall be operational twenty four (24) hours a day, seven (7) days a week during the Opt-Out Period. The Opt-Out Notices shall prominently include both the toll-free number and the internet address of the secure website. Supplier shall support Spanish speaking residents and customers with disabilities to the satisfaction of the Municipality.

4.2.1.4 Reporting. During the Opt-Out Period, Supplier shall be responsible for receipt of all Opt-Out Notices. Supplier shall assemble, track, and report to the Municipality concerning the delivery and receipt of all Opt-Out Notices to and from Eligible Customers, including without limitation providing the Municipality with complete information concerning all Eligible Customers who choose to opt-out of the Program whether by mail, telephone, or the secure website.

4.2.2 Required Disclosures. Supplier shall provide Eligible Customers with all information required to be disclosed to Eligible Customers concerning Full-Requirements Electricity Supply and the Program pursuant to the Requirements of Law, including without limitation all information required to be included in the Opt-Out Notices.

4.3 Enrollment Services. The Supplier shall supply the following Enrollment Services:

4.3.1 Record of Participating Customers. Following the completion of the Opt-Out Period, the Supplier shall compile a complete list of all Participating Customers and those Eligible Customers who have opted out of the Program, and shall ensure that no Eligible Customers who have opted out are enrolled in the Program.

4.3.2 Enrollment. Upon completion of the Opt-Out Process and the identification of all Eligible Customers who have opted out of the Program, the Supplier shall, at its sole cost

and expense, take all actions necessary to enroll Participating Customers in the Program pursuant to the Requirements of Law.

4.3.3 Term of Enrollment. Participating Customers who do not opt out of the Program shall be enrolled in the Program by the Supplier, and shall remain enrolled in the Program until the end of the Term, unless the Agreement is terminated pursuant to its terms or the Participating Customer withdraws from the Program pursuant to Section 4.3.6 of this Agreement

4.3.4 Direct Access Service Request. The Supplier shall submit a direct access service request to ComEd for each Participating Customer in compliance with the "standard switching" subsection of Rate RDS -Retail Delivery Service, in order to allow Full-Requirements Electricity Supply to commence following the Municipality's implementation schedule.

4.3.5 Payment of Switching Fees. The Supplier shall reimburse Participating Customers for any switching fee imposed by the Electric Utility related to the enrollment of a Participating Customer in the Program upon thirty (30) days' of receipt of notice of such switching fee from the Municipality or Participating Customer. The Supplier shall not be responsible to pay any switching fees imposed on Participating Customers who switch service from an alternative retail electric supplier related to the enrollment of a Participating customer into the Program.

4.3.6 Withdrawal by a Participating Customer. Participating Customers who notify the Supplier after the completion of the Opt-Out Period that the Participating Customer desires to withdraw from the Program ("Withdrawing Customer"), the Supplier must, at the direction of the Participating Customer, drop the Participating Customer from the Supplier's Full-Requirements Electricity Supply on the next available meter read, which will result in restoring the Participating Customer to Tariff Service. The Supplier may assess an early termination fee of not to exceed fifty dollars (\$50.00) to a Withdrawing Customer, provided that no early termination fee may be assessed to Withdrawing Customer who notifies the Supplier that they are withdrawing because they are moving outside of the geographic boundaries of the Municipality.

4.3.7 Opt Out Regret Period: Members electing to opt out of the Aggregation Program shall be readmitted to the program at the same terms of the agreement, provided they request readmission within 60 days of the Opt-Out Period end date. Additionally, any resident or small commercial business not eligible at the beginning of the contract shall be admitted so long as they request admission within 60 days from the Opt-Out Period end date.

Supplier Service Inquiries. After completion of the Opt-Out Period, the Supplier shall maintain and operate a toll-free telephone number and internet website for the purpose of receiving questions and comments from Participating Customers concerning the Full-Requirements Electricity Supply. The Supplier may inform Participating Customers that questions about the delivery and billing of the Full-Requirements Electricity Supply should be directed to ComEd. Supplier shall promptly and courteously address customer service inquiries in a manner that meets or exceeds the ICC requirements for the operation of call centers.



4.3.8 Special Billing Customers. Subject to the Requirements of Law and due to the minimal and/or fixed nature of their existing billing rates, the following Eligible Customers shall not be automatically enrolled in the Program, but may subsequently elect to enroll in the Program as New Customers pursuant to Section 4.3.9 of this Agreement:

a. Any Eligible Customer in the residential customer class, as described in Section 4.4.2 of this Agreement, that is taking service under the following ComEd rates:

- i. Rate BESH – Basic Electric Service Hourly Pricing
- ii. Rate RDS – Retail Delivery Service; and

b. Any eligible Customer in the commercial customer class, as described in Section 4.4.2 of this Agreement, that is taking service under the following ComEd rates:

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

4.3.9 New Customers. After the commencement of the Program and the enrollment of Participating Customers, the Supplier shall, at the request of a New Customer, as defined in this Section 4.3.9, immediately enroll the following customers in the Program and provide Full-Requirements Electricity Supply to those customers at the Price, with no additional surcharge or fee in addition thereto:

- a. Any Eligible Customer within the Municipality who moves to a new location within the Municipality;
- b. Any Eligible Customer who moves into an existing location within the Municipality;
- c. Any Eligible Customer who previously opted out of the Program during the Opt-Out Period and request readmission within sixty (60) days of the opt-out period end date; and
- d. Any Eligible Customer who was inadvertently omitted from the list of Participating Customers and not enrolled in the Program (collectively, the Eligible Customer(s) set forth in this Section 4.3.9.a. to 4.3.9.d., inclusive, are the "New Customers").

4.4 Billing Services. The Supplier shall supply the following Billing Services as provided in this Section 4.4:

4.4.1 Billing Generally. Supplier shall confirm that billing to Eligible Customers will be provided by ComEd under a consolidated billing format pursuant to "Rider PORCB – Purchase of Receivables and Consolidated Billing," and pursuant to the Requirements of Law. The Municipality acknowledges and agrees that ComEd shall bill Participating Customers for the Price of the Full-Requirements Electricity Supply as part of its billing for the distribution of such supply, and that the Supplier shall not bill Participating Customers.

4.4.2 Customer Classes. Eligible Customers shall be categorized within either the residential or commercial customer classes according to the applicable rates under which they received electricity supply from ComEd prior to participating in the Program.

4.4.2.1 Residential Customer Class. The residential customer class shall include Participating Customers taking service from ComEd under the following rates:

- a. Residential Single Family
- b. Residential Multi Family

4.4.2.1 Commercial Customer Class. The commercial customer class shall include those Participating Customers taking service from ComEd under the following rates:

- a. 15,000 kWh's or less Delivery Class

4.5 Compliance Services. The Supplier shall assist the Municipality in complying with any current or future Requirements of Law concerning the operation of the Program, including without limitation the provision of reports or other information as the Municipality may request from time to time.

4.6 Following the completion of the Opt-Out Period, the Supplier shall compile a complete list of all Participating Customers in the Program. Supplier shall update this list as new customers are added and deleted. Supplier shall make this list available to the Municipality within two (2) business days upon request by the Municipality. Additionally, within one hundred twenty (120) days of the end of this agreement, Supplier will make the Program's load data by rate class available to the Municipality. Load data shall include:

- a. historical usage data.
- b. Capacity Peak Load Contribution ("CPLC") values and effective start and end dates.
- c. Network Service Peak Load Contribution ("NPLC") values and effective start and end dates.
- d. meter bill group numbers.
- e. rate codes.

## **ARTICLE 5 TERM**

5.1 Term. This Agreement commences as of the Effective Date and is for a term of \_\_\_ ( ) consecutive monthly billing periods starting from the initial meter read date designated by the municipality in consultation with the Supplier in \_\_\_\_\_, 2012 and expires at the end of the last day of the \_th billing cycle for the Participating Customer(s) with the latest billing cycle (the "Term"). The Municipality and the Supplier may extend the Term for additional periods of time, by written agreement approved and executed by each Party\_ (each an "Extended Term"). Nothing in this Article 5 related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by the Municipality to the Supplier shall continue beyond the Term or an approved Extended Term. Notwithstanding the provisions of this Section 5.1, if the rate for Tariffed Service falls below the Price during the Term, the Supplier may terminate this Agreement after returning Participating Customers to Tariffed Service as provided in Section 4.1.3 of this Agreement.

5.2 In the event this agreement is not renewed or terminated for any reason, including expiration according to its terms, the Municipality may choose another ARES Provider or all Participating Customers shall be switched by the Supplier to service with ComEd in accord with the standard switching rules and applicable notices or as otherwise required by any applicable law or regulation.

**ARTICLE 6**  
**REMEDIES AND TERMINATION**

6.1 Municipality's General Remedies. In addition to every other right or remedy provided to the Municipality under this Agreement, if the Supplier fails to comply with any of the provisions of this Agreement (for reason other than a Force Majeure Event, as defined in Section 7.1. below, pursuant to Section 7.1 of this Agreement, as defined in Section 7.2 below, pursuant to Section 7.2 of this Agreement, the Municipality may give notice to the Supplier specifying that failure. The Supplier shall thereafter have fifteen (15) calendar days to take all necessary steps to comply fully with this Agreement, unless (a) this Agreement specifically provides for a shorter cure period or (b) an imminent threat to the public health, safety, or welfare arises that requires a shorter cure period, in which case the notice must specify the cure period. If the Supplier fails to comply within the applicable cure period, or a shorter time if an imminent threat, or if the Supplier fails to promptly commence a cure and diligently pursue the cure to completion, then the Municipality may take any one or more of the following actions:

- a. Seek specific performance of any provision of this Agreement or seek other equitable relief, and institute a lawsuit against the Supplier for those purposes.
- b. Institute a lawsuit against the Supplier for breach of this Agreement and, except as provided in Section 6.3 of this Agreement, seek remedies and damages as the court may award.
- c. In the case of noncompliance with a material provision of this Agreement, declare this Agreement to be terminated. Such termination shall be effective within ten (10) days of notice given by the Municipality to the Supplier.

If the rights and privileges granted to the Supplier under this Agreement are terminated, then the Supplier, within fourteen (14) calendar days after the Municipality's demand, shall reimburse the Municipality for all costs and expenses incurred by the Municipality, including, without limitation, reasonable attorneys' fees, in connection with that termination of rights or with any other enforcement action undertaken by the Municipality.

6.2 Actions on Termination or Expiration of this Agreement. This Agreement shall terminate upon the expiration of the Term or an Extended Term, as applicable, or the Municipality's termination of the Agreement pursuant to Section 6.1.c. Upon termination as a result of expiration of the Term (absent agreement upon an Extended Term), or upon termination as a result of expiration of an Extended Term, as applicable, Supplier shall return Participating Customers to Tariffed Service upon expiration of the Term or Extended Term, as applicable, on the first available meter read. In the event of the Municipality's termination of the Agreement prior to the end of the Term or Extended Term pursuant to Section 6.1.c, as applicable, Supplier shall return Participating Customers to Tariffed Service on the second available meter read in order to provide the opportunity for Participating Customers to identify alternate sources of electrical supply prior to returning to Tariffed Service. Participating Customers shall not be liable for any termination fee as a result of such termination or expiration in accordance with the preceding sentences of this Section 6.2.

6.3 Limitation of Liability. Except for the Supplier's failure to provide Full-Requirements Electricity Supply to Participating Customers or the disclosure of Customer Information in violation of the Requirements of Law, or as otherwise specifically provided herein, in no event will either Party be liable to the other Party under this Agreement for incidental, indirect, special, punitive, or consequential damages connected with or resulting from performance or non-performance of this Agreement, irrespective of whether such claims are based upon breach of warranty, tort (including negligence of any degree), strict liability, contract, operation of law or otherwise.

**ARTICLE 7**

## **FORCE MAJEURE EVENTS**

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

## **ARTICLE 8 INDEMNIFICATION AND INSURANCE**

8.1 Indemnification. The Supplier shall indemnify and hold harmless the Municipalities, their officers, employees, agents, volunteers, and attorneys, from and against any third party injuries, claims, demands, judgments, damages, losses and expenses of any kind, including reasonable attorney's fees and costs of suit or defense, arising from the Supplier's provision of the Services. The Municipalities shall provide the Supplier with timely written notice of its obligation to indemnify and defend the Municipalities after the Municipalities' receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Supplier and/or the Municipalities. Nothing herein shall be construed to limit the Supplier's duty to indemnify the Municipalities by reference to the limits of insurance coverage described in this Agreement. In the event any such claim or demand is made, the Municipalities shall be permitted to retain its choice of counsel, to be paid for by the Supplier, and the Municipalities shall have the right to conduct and direct its own defense.

8.2 Insurance. Contemporaneous with the Supplier's execution of this Agreement, the Supplier shall provide certificates of insurance, all with coverages and limits as set forth in the RFP Package.

## **ARTICLE 9 CONFIDENTIAL INFORMATION**

9.1 Confidential and Proprietary Information. Notwithstanding anything to the contrary set forth herein, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature. The Parties agree that any information disclosed by a Party and designated as proprietary and confidential shall only be disclosed to those officials, employees, representatives, and agents of the other Party that have a need to know in order to administer and enforce this Agreement. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to a Party's corporate structure and affiliates, marketing plans, financial information unrelated to the calculation of the Price or rates pursuant to the Requirements of Law, or other information that is reasonably determined by a Party to be competitively sensitive. A Party may make proprietary or confidential information available for inspection but not copying or removal by the other Party's representatives. Compliance by the Municipality with the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* ("Illinois FOIA") or other similar "sunshine law," including compliance with an Illinois FOIA request, or an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois FOIA, or with a decision or order of a court with jurisdiction over the Municipality, shall not be a violation of this Section.

9.2 Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than the Supplier's confidential

information, will be and remain the sole property of the Municipality. The Supplier shall promptly deliver all Data to the Municipality at the Municipality's request. The Supplier shall ensure the care and protection of the Data until that delivery. The Supplier may retain one (1) copy of the Data for the Supplier's records subject to the Supplier's continued compliance with the provisions of this Agreement.

9.3 Limitations on Customer Information. The parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Mutual Representations and Warranties. Each Party represents and warrant to the other Party, as of the date of this Agreement, that:

- a. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
- b. It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
- c. The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- d. It has reviewed and understands this Agreement; and
- e. It shall comply with all the Requirements of Law.

10.2 Supplier agrees that all information presented in its RFP response dated \_\_\_\_\_, are accurate and there have been no material changes to that information.

10.3 Entire Agreement. This RFP Package, including this Agreement and all attachments hereto, contain all of the terms and conditions of the Agreement reached by the Parties, and supersede all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by both Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

10.4 RFP Packages and Exhibits. The RFP Package and all exhibits attached to this Agreement are, by this reference, incorporated into and made part of this Agreement. In the event of any inconsistency between the terms herein and the Terms and Conditions of the RFP, the provisions of the Terms and Conditions of the RFP shall control.

10.5 No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

10.6 No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, that the Municipalities may have under Federal or state law unless such waiver is expressly stated herein.

10.7 Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.8 Authority to Sign Agreement. Each Party warrants to the other Parties that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of each Party warrants to the other Parties that he/she is authorized to execute this Agreement in the name of the Party for which he/she is signing.

10.9 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Municipality and the Supplier and their respective successors, grantees, lessees, and assigns throughout the Term of this Agreement.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement to be effective on the date first written above.

Supplier: \_\_\_\_\_

Municipality: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed/Typed Name:

Printed/Typed Name:

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Municipality: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed/Typed Name:

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

**EXHIBIT B**

**PRICING**

**Best and Final Pricing Request for the Villages of  
Downers Grove and Westmont, Illinois**

Pricing is due by **10:30 AM Central Time Wednesday, June 13, 2012**

Please send pricing via email to:

[jbelden@beldenenergy.com](mailto:jbelden@beldenenergy.com)

[rsearl@westmont.il.gov](mailto:rsearl@westmont.il.gov)

[epetrarca@downers.us](mailto:epetrarca@downers.us)

Pricing is provided according to the terms and conditions of the Villages RFP package issued on May 18, 2012 including the Master Power Supply Agreement provided to supplier on June 12, 2012.

Supplier Name: FirstEnergy Solutions

Term of service: 24 months with service beginning August, 2012

Load Served: Combined Villages' Eligible Customers

Amount of supplemental RECs: 100% of load served

Unit Price in \$ per kW/hr: \$0.0475 / kWh

Amount of Early Exit fee (if any in \$ per account) 0

Price to include all specified items and components outlined in the Master Power Supply Agreement.

A decision to accept/reject pricing offers will be made by the Villages on or before 12:00 noon on June 13, 2012.

Submitted by:

Rick Olson

Print Name:

Phone Number: 630-428-1424

Email: [rolson@fes.com](mailto:rolson@fes.com)