

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
 X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: May 23, 2012 (COW)(B of T) June 7, 2012

TITLE: Motion to Ratify a Contract with First Energy Solutions for the Provision of
Electrical Energy for the Electric Aggregation Program

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

At the May 3, 2012 Village Board meeting, the Village Board selected the 100% renewable energy bid from First Energy Solutions for the Village's Electric Aggregation Program. Staff and the Village Attorney have been working with First Energy on the contract, and this contract was signed on May 21, 2012. The Village Attorney advised that the contract should be placed on the first available Village Board meeting following the execution thereof for ratification by the President and Board of Trustees

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X _____	Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

MASTER POWER SUPPLY AGREEMENT

AGREEMENT BY AND BETWEEN THE VILLAGE OF LOMBARD 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 ____ day of May, 2012 ("Effective Date") between the Village of Lombard, an Illinois municipal corporation ("Municipality") and FirstEnergy Solutions ("Supplier") (each a "Party" and collectively, the "Parties").

RECITALS

A. The Municipality has established an Electricity Aggregation Program ("Program") pursuant to the Aggregation Ordinance and the Aggregation Statute, and will conduct the Program as an opt-out program pursuant to the Aggregation Ordinance and the Aggregation Statute.

B. In order to identify qualified suppliers of electricity for the Program, the Northern Illinois Municipal Electric Collaborative ("NIMEC") conducted a Request for Qualifications and Joint Power Supply Bid process.

C. The purpose of this Agreement is for the Supplier to provide the Services to the Municipality for implementation of the Aggregation Program to all Eligible Customers who choose not to opt out of the Program throughout the Term of this Agreement at the Price established in this Agreement.

D. The Supplier acknowledges and agrees that it has all certifications, authorizations, qualifications, and approvals necessary pursuant to the Requirements of Law 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 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 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 years continuous experience as a Retail Electric Supplier and has provided Full-Requirements Electricity Supply Services to at least 25,000 residential or commercial customers;
- d. Supplier acknowledges and agrees that it will provide the Services, including without limitation Full-Requirements Electricity Supply Services to all Participating Customers, pursuant to the Bid Package, the Bid 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 Services to all Eligible Customers pursuant to the Program.

AGREEMENT

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

ARTICLE 1 RECITALS

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

ARTICLE 2 DEFINITIONS

The following terms as used in this Agreement shall have the meanings ascribed to them in this Article:

- 2.1. "Aggregate" means the total number of Eligible Customers that are within the jurisdictional boundaries of the Municipality.
- 2.2. "Aggregation Ordinance" means that certain ordinance adopted by the Municipality authorizing the Program.
- 2.3. "Aggregation Statute" means Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 and the rules and regulations of the Illinois Commerce Commission applicable thereto.
- 2.4. "Bid Package" means the bid documents provided to the pre-qualified bidders pursuant to the Power Supply Bid and attached to this Agreement as Exhibit A, and made part hereof.
- 2.5. "Bid Response" means the response submitted by the Supplier to the Bid Package, which is attached to this Agreement as Exhibit B, and made part hereof.
- 2.6. "Billing Services" means those services described in Section 4.4 of this Agreement, including all subsections of Section 4.4.
- 2.7. "ComEd" means Commonwealth Edison.
- 2.8. "Compliance Services" means those services identified in Section 4.5 of this Agreement, including all subsections of Section 4.5.

- 2.9. "Confidential Information" means the information defined in Article 9 of this Agreement.
- 2.10. "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.
- 2.11. "Data" means the data defined in Article 9 of this Agreement.
- 2.12. "Electric Utility" means ComEd.
- 2.13. "Eligible Customers" means residential and small commercial electricity customers receiving Full-Requirements Electricity Supply Services within the Municipality who are eligible to participate in the Program pursuant to the Aggregation Statute and the Requirements of Law.
- 2.14. "Energy" means generated electricity.
- 2.15. "Enrollment Services" means those services described in Section 4.3 of this Agreement, including all subsections of Section 4.3.
- 2.16. "Extended Term" means the term defined in Section 5.1 of this Agreement.
- 2.17. "Force Majeure Event" means the circumstances defined in Section 7.1 of this Agreement.
- 2.18. "Full-Requirements Electricity Supply" means all services or charges necessary to provide the continuous supply of electricity to all Participating Customers, including, without limitation, Energy, capacity, losses, renewable portfolio standard (RPS) charges, imbalances, load factor adjustments, transmission costs, congestion charges, marginal losses, ancillary services, taxes applicable only to the Supplier, and any additional necessary services or charges.
- 2.19. "Full-Requirements Electricity Supply Services" means those portions of the Services described in Section 4.1 of this Agreement, including all subsections of Section 4.1.
- 2.20. "ICC" means the Illinois Commerce Commission
- 2.21. "Independent System Operator" or "ISO" means that certain independent system operator for the Electric Utility established pursuant to Section 16-126 of the Public Utilities Act, 220 ILCS 5/16-626.
- 2.22. "Joint Power Supply Bid" means the bidding process conducted by NIMEC on behalf of the Municipality to identify the Supplier.
- 2.23. "New Customers" means the customers defined in Section 4.3.9 of this Agreement.

2.24. "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.

2.25. "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.

2.26. "Opt-Out Process" means the process defined in Section 4.2.1 of this Agreement.

2.27. "Participating Customers" means those Eligible Customers who do not opt out of the Program and are not Special Billing Customers, and New Customers.

2.28. "Plan of Governance" or "POG" means that certain Plan of Operation and Governance approved by the Municipality on May 3, 2012, pursuant to the Aggregation Statute

2.29. "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.

2.30. "Price" means the fixed price expressed in cents per kilowatt hour at which the Supplier will provide the Services as set forth in Exhibit C attached hereto and made part hereof.

2.31. "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.

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

2.33. "Requirements of Law" means the Aggregation Ordinance, the Aggregation Statute, the Plan of Governance, the rules and regulations of the ICC and Illinois Power Agency (including the ICC Order in Case No. 11-0434 issued on April 4, 2012), the rules, regulations and tariffs applicable to the Electric Utility and the Independent System Operator, and all other applicable federal, state, and local laws, orders, rules, and regulations, all as may be hereinafter duly amended.

2.34. "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 ILCS 5/16-102.

2.35. "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.

2.36. "Special Billing Customers" means the customers defined in Section 4.3.8 of this Agreement.

2.37. "Supplier" means FirstEnergy Solutions and the lawful successor, transferee, designee, or assignee thereof.

2.38. "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.

2.39. "Term" means the period of time defined in Section 5.1 of this Agreement.

2.40. "Municipality" means the Village of Lombard.

2.41. "Withdrawing Customer" means a customer 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 Customers 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, New Customers or Participating Customers.

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 or entity, 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 will 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 Services to allow the Electric Utility to deliver and distribute uninterrupted electric service to all 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.

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

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

3.2.4 Supplier covenants that all information provided by the Supplier 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 Services: 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 Services.

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 will arrange for 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 will cause to be transmitted and delivered 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 comply with any requirement related to the providing of Full-Requirements Electricity Supply Services 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 Services 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 Participating Customers or the Municipality.

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. 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 Price Guarantee. If the rates for Tariffed Service to a particular rate class are set below the Price during the Term of this Agreement, then within 30 days of notification by the Municipality of the new Tariffed Service rate, Supplier shall, either (a) adjust the Price to the Tariffed Service rate, or (b) after taking all steps necessary to return all Participating Customers to the Electric Utility, 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 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 Customer of Full-Requirements Electricity Supply Services 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 must 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 Services to those Participating Customers, which terms and conditions shall comply with and accurately reflect all of the requirements of this Agreement and the Requirements of Law and shall be substantially similar to the form attached hereto as Exhibit D and made part hereof.

4.2.1.2 Notices to Special Billing Customers. The Municipality acknowledges that the Municipality may 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 4.3.9 of this Agreement.

4.2.1.3 Toll Free Telephone 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 telephone number and secure website for the use of Eligible Customers to opt out of the Program. The toll-free telephone number must be operational during normal business hours and the secure website must be operational 24 hours a day, seven days a week during the Opt-Out Period. The Opt-Out Notices must prominently include both the toll-free telephone number and the internet address of the secure website. Supplier will be required to support Spanish speaking Eligible Customers and Eligible Customers with disabilities.

4.2.1.4 Reporting. During the Opt-Out Period, Supplier is responsible for receipt of all Opt-Out Notices. Supplier must 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 Services 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 must supply the following Enrollment Services as provided in this Section 4.3:

4.3.1 Record of Participating Customers. Following the completion of the Opt-Out Period, the Supplier shall be responsible to 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 Services to commence following the Municipality's implementation schedule which is attached hereto as Exhibit E, and made part hereof.

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 within 30 days of receiving notice of such switching fee. The Supplier shall not be responsible to pay any switching fees imposed on Participating Customers who switch service from an alternative retail electric supplier.

4.3.6 Withdrawal by a Participating Customer. For 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 Services on the next available meter read, which will result in restoring the Participating Customer to Tariffed Service. The Supplier may assess an early termination fee of \$25 to Withdrawing Customers, provided that no early termination fee may be assessed to Withdrawing Customers who notify the Supplier that they are withdrawing because they are moving out of the Municipality.

4.3.7 Customer Service Inquiries. After completion of the Opt-Out Period, Supplier must 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 Services. The Supplier may inform Participating Customers that questions about the delivery and billing of the Full-Requirements Electricity Supply Services should be directed to ComEd. Supplier must 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:

4.3.8.1. Any Eligible Customer to which the following ComEd delivery classes are applicable:

- Residential Single Family With Electric Space Heat Delivery Class
- Residential Multi Family With Electric Space Heat Delivery Class

4.3.8.2. 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:

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

4.3.8.3. 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:

- Rate BESH – Basic Electric Service Hourly Pricing
- 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 Services to those customers at the Price:

4.3.9.1. Any Eligible Customer within the Municipality that moves to a new location within the Municipality;

4.3.9.2. Any Eligible Customer that moves into an existing location within the Municipality;

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

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

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

4.4.1 Billing Generally. Supplier shall confirm that billing to Participating 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 will bill Participating Customers for the Price of the Services as part of its billing for the distribution of such supply, and that the Supplier shall not be responsible for billing 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:

- Residential Single Family Without Electric Space Heat Delivery Class
- Residential Multi Family Without Electric Space Heat Delivery Class

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

- 15,000 kWh's or less Delivery Class

4.5 Compliance Services. The Supplier shall, at no cost to the Municipality, 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 reasonably request from time to time.

4.6 Following the completion of the Opt-Out Period, the Supplier shall be responsible to compile a complete list of all Participating Customers in the Program. Supplier will update this list as New Customers are added and deleted. Supplier will make this list available to the Municipality at any time the Municipality requests the list. Additionally, within 120 days of the end of the Term of this Agreement, Supplier will make the Program's load data by rate class available to the Municipality. Load data shall include:

- Historical Usage Data.
- Capacity Peak Load Contribution (PLC) values and effective start and end dates.
- Network Service Peak Load Contribution (PLC) values and effective start and end dates.
- Meter Bill Group Number.
- Rate Code.

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 July 2012, and expires at the end of the last day of the 24th 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 up to 3 years for each extension, 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 will 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 RES or Retail Electric Supplier and Supplier shall allow all Participating Customers to be switched to the selected RES, 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 pursuant to Section 7.1 of this Agreement or a Regulatory Event pursuant to Section 7.2 of this Agreement), then the Municipality may give notice to the Supplier specifying that failure. The Supplier will have 15 calendar days after the date of that notice 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 that 15-day period, or the shorter period 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:

- 6.1.1 Seek specific performance of any provision of this Agreement or seek other equitable relief, and institute a lawsuit against the Supplier for those purposes.
- 6.1.2 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.
- 6.1.3 In the case of noncompliance with a material provision of this Agreement and after reasonable opportunity to cure not to exceed ten days, declare this Agreement to be terminated, with said termination to be effective ten (10) days after the giving of such a termination notice to the Supplier.

If the rights and privileges granted to the Supplier under this Agreement are terminated, then the Supplier, within 14 calendar days after the Municipality's demand, must 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 (with the understanding that the expiration of service for any particular Participating Customer will be tied to that customer's billing cycle), or the Municipality's termination of the Agreement pursuant to Section 6.1 or 4.1.3.

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 Services 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 AND REGULATORY 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. . 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.

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, in which case the Supplier shall take those actions as required for termination or expiration of this Agreement as set forth in Section 6.2 above.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 Indemnification. The Supplier shall indemnify and hold harmless the Municipality, its officers, employees, agents, 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 give the Supplier 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.

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 Exhibit F attached hereto and made part hereof. For good cause shown, the Municipality Manager, or his or her designee may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the Municipality Manager, or his or her designee may impose in the exercise of his/her sole discretion. Such certificates and policies shall be in a form acceptable to the Municipality and from companies with a general rating of A minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of 30 days after written notice thereof

shall have been given by the insurance company to the Municipality. The Supplier shall, at all times during the term of this Agreement, maintain and keep in force, at the Supplier's expense, the insurance coverages provided above.

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"), including compliance with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois FOIA, or with a decision or order of a court with jurisdiction over the 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 must promptly deliver all Data to the Municipality at the Municipality's request. The Supplier is responsible for the care and protection of the Data until that delivery. The Supplier may retain one 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. Both Parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH, the ICC Order in Case No. 11-0434 issued April 4, 2012, and the provisions of ComEd's Tariff Rate GAP. Municipality shall warrant to ComEd that customer-specific information provided to the Municipality in accordance with the provisions of ComEd's Tariff Rate GAP shall be treated as confidential. To protect the confidentiality of Customer Information:

9.3.1 Supplier access to Customer Information is limited those authorized representatives of Supplier, or any third party, who have a need to know the information for purposes of this Agreement.

9.3.2 Supplier warrants that it will not disclose, use, sell, or provide Customer Information to any person, firm or entity for any purpose outside of the Aggregation Program.

9.3.3 Supplier and Municipality acknowledge that Customer Information remains the property of the Municipality and that material breaches of confidentiality will prohibit Supplier from placing any new bids to the Municipality's subsequent Request(s) for Qualifications for a period of one year after termination of this Agreement.

9.3.4 Supplier warrants that it will delete and/or destroy the Customer Information described in Items 18 through 23 of the Company Obligations Section of ComEd's Tariff Rate GAP, and provided by Municipality, within 60 days after ComEd provides the information to Municipality. Municipality will offer its assistance to ensure that Supplier meets these requirements and deadlines.

9.4 Proprietary Rights, Survival. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information. The obligations under this Article Nine shall survive the conclusion or termination of this Agreement for two (2) years.

ARTICLE 10 MISCELLANEOUS

10.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and the exhibits to this Agreement shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

To Municipality

Village of Lombard
Attn: Village Manager
225 E. Wilson Avenue
Lombard, Illinois 60148-3969

To Supplier

Brenda Fargo, Manager Gov't Agg.
FirstEnergy Solutions
341 White Pond Drive, B-3
Akron, OH 44320

With a copy to:

Klein, Thorpe and Jenkins, Ltd.
Attn: Tom Bayer
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606

With a copy to:

General Counsel
FirstEnergy Corp.
76 S. Main St., 15th Floor
Akron, Ohio 44308

10.2 Mutual Representations and Warranties. Each Party represents and warrants 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, to the extent applicable, shall comply with all the Requirements of Law.

10.3 Supplier agrees that all information presented in its Response to Qualifications for Municipal Aggregated Electricity Supply For Member Communities of the Northern Illinois Municipal Electric Collaborate, dated 4/23/12, are accurate and there have been no material changes to that information. Any exceptions are noted on attached exhibit and made part of this agreement.

10.4 Entire Agreement. This Agreement and the Response to Qualifications referenced in Section 10.3, including all Exhibits hereto, contain all of the terms and conditions of this Agreement reached by the Parties, and supersedes 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.

10.5 Exhibits. Exhibits A through F attached to this Agreement are, by this reference, incorporated into and made part of this Agreement.

10.6 Waivers. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

10.7 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois without regard for the conflicts of law provisions thereof.

10.8 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Exhibits hereto, the provisions of the Agreement shall control.

10.9 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

10.10 Venue. Except as to any matter within the jurisdiction of the ICC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, DuPage County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois, Eastern Division.

10.11 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.

10.12 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.

10.13 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.

10.14 Authority to Sign Agreement. Each Party warrants to the other Party 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 Party that he/she is authorized to execute this Agreement in the name of the Party for which he/she is signing.

10.15 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.

10.16 Non-Assignability. This Agreement shall not be transferred or assigned by the Supplier without the express written authorization of the Municipality.

10.17 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: _____

Signed: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Attest: _____

Municipality: VILLAGE OF LOMBARD

Signed: 

Printed/Typed Name: CARL GOLDSMITH

Title: ACTING VILLAGE MANAGER

Date: 5/21/12

Attest: 

EXHIBIT A
BID PACKAGE

EXHIBIT A

Request for Proposal

**For Municipal Aggregated Electricity Supply For
Residential and Small Commercial Retail Customers**

Issued By:

**The Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148**

Issue Date: April 24, 2012

**Response Date: May 3, 2012
(1:00 PM Central Time)**

The Village of Lombard (“Lombard” or “Village”) invites Certified Retail Electric Suppliers (Supplier) to submit proposals for Municipal Aggregated Electric Supply and electric related services (Supply Agreement) in accordance with the requirements, terms, and conditions of this Request for Proposal (RFP). The Village has not previously entered into a Supply Agreement. The RFP is designed to support the start of the Village’s program as soon as possible. The electrical distribution company for the Village is Commonwealth Edison (ComEd). This is a RFP only and is not a purchase order, contract or offer. Selection of the supplier(s) by the Village will be completed and made public no later than May 31, 2012.

1.0 – Objective

1.1 - The Village is seeking to obtain electric cost savings as well as a reliable source of generation for its constituents that it represents in this RFP by aggregating all eligible residential and small commercial retail accounts under Section 1-92 Chapter 20, Act 3855 of the Illinois Compiled Statutes (Act) for power to flow beginning July 6, 2012. Please provide firm pricing to be held open for 24 hours

1.2 - The Village is seeking a supplier for electric generation as well as a turnkey program including all the aggregation services needed to meet the requirements of the Illinois Commerce Commission and the Act. Such services shall include but not be limited to the following: Governance Plan development assistance, assistance in applying for certification, administration of the opt-out process, provision for a toll-free call- center to handle customer calls, attendance at public meetings as needed and filing of all required reports. The costs for these services shall be included in the pricing offered to the Village.

1.3 The Village may be submitting this RFP one the same day as other municipalities. The Village is requesting an individual response to this RFP. It is not requesting one price for all RFP’s. If submitted with other municipalities, the Northern Illinois Municipal Electric Collaborative, Inc. (NIMEC) will assist the municipalities’ efforts to select the supplier offering the most aggressive bid for the entire group. The goal is to award all the contracts to one supplier. Municipalities will be then individually determine which term is preferable, and accept their bid from the winning supplier.

2.0 – Background

2.1 - The Village held a referendum to select an opt-out program pursuant to the Act and the referendum passed according to the terms of the Act. The Village duly passed an Ordinance under the Act providing for the aggregation of electric loads on an opt-out program as allowed

under the terms of the Act. As a result, Lombard now has the right to aggregate the electricity usage of its residential and small commercial retail accounts in the Lombard corporate limits to provide savings under this RFP.

2.2 - The Village may elect to hold an individual bid or participate in a group bid. If the Village elects to participate in a group bid, the Village may use NIMEC to assist with the group bid. The Village will not delegate any signing authority to NIMEC or other entity, but will make its own decision to accept or reject their individual bid resulting from the group bid. Suppliers will present individual bids to each community participating in the bid group. NIMEC will create an advisory group, representing and consisting of those communities participating in the bid, to determine the bid winner(s) on the day of the bid. NIMEC will then recommend that each Village accept the bid winner's individual bid for the Village. The Village will then decide to accept or reject their individual bid. Whether or not each community participating in the bid accepts or rejects their individual bid will have no impact upon the individual bids of the other communities.

3.0 - Confidentiality and Proprietary Information

3.1 - Suppliers should treat all information contained in this RFP or provided by the Village as confidential. All information provided by the Village is for proposal purposes only and is not to be disclosed to anyone or used for any other purpose and shall be returned to the Village. Supplier shall take all reasonable precautions in protecting such information. The estimated electric consumption data is attached hereto and made a part hereof by this reference.

3.2 - Responses to this RFP may include proprietary or confidential information. The company shall clearly mark any information provided to the Village that is to be treated as confidential. The Village will take reasonable precautions in protecting such information provided it is clearly identified as propriety or confidential on the page on which it appears. In no event shall the Village be responsible for inadvertent disclosure of information in your response to this RFP.

4.0 - Pricing Options

4.1 - Suppliers will be responsible for payment of any customer processing fee (if any) for those who have switched to the supplier. Please provide pricing for the following two scenarios:

- a) Residential – Excluded from this aggregation will be Residential customers on Utility Hourly pricing, electric Space Heat, those who are being served on 3rd party supply with another RES, as well as municipal accounts under ComEd franchise agreement.
- b) Small Commercial: Excluded from this aggregation will be Small Commercial customers on Utility Hourly pricing, fixture included lighting, electric space heat and those who are being served on 3rd party supply with another RES.

4.2 – Pricing will be a firm commitment through May 4, 2012 at 1:00pm. Pricing should be quoted at a fixed rate per kWh. This pricing will only be available for those residential and small commercial customers who do not opt-out of Lombard's program.

4.3 - The supplier may not elect to limit participation to specific size customers, if not limited by Illinois state law.

4.4 - Supplier is responsible for fulfilling all requirements necessary to conduct business in the Lombard service territory.

4.5 - All pricing will include energy, capacity, transmission and distribution losses, Renewable Portfolio Standard (RPS) charges, imbalances, load factor adjustments, transmission, congestion charges, ancillary services, and applicable taxes.

4.6 – Supplier shall provide pricing for renewable energy in excess of the Illinois RPS. Suppliers shall secure Renewable Energy Credits sourced through Illinois RPS compliant or national green –e certifiable hydroelectric, wind, solar photovoltaic or captured methane-landfill gas.

4.7 - Bidders should use the ComEd rate schedules and/or customer class.

4.8 - All prices must be expressed in terms of ¢/kWh.

4.9 - Supplier shall guarantee delivery of electricity supply to ComEd s system in compliance with ComEd s tariff requirements.

4.10 - Supplier shall provide for the delivery of energy and ancillary services up to the Delivery Point designated in ComEd s Supplier Service Agreement. Supplier shall bear the risk for all transmission costs and any other costs or charges imposed or associated with the delivery of the electricity up to the Delivery Point and Customer shall bear the risk for any and

all ComEd distribution costs, and any other costs or charges associated with the receipt of the electricity at and after the Delivery Point.

4.11 - Taxes: State and/or local taxes shall be clearly identified and not necessarily included in the proposed price including gross receipts tax, county sales tax and excise tax.

4.12 - An administrative fee payable by the selected supplier on at least a quarterly basis is required. The fee amount is \$0.000275/kWh. Only suppliers agreeing to the administrative fee and signing Attachment 2 are eligible to bid. All checks are to be made payable to the Glenview Consulting Group, Ltd. (The Glenview Consulting Group has adopted and transacts business in the state of Illinois under the assumed corporate name of NIMEC.)

4.13 - NIMEC incurred direct costs to educate Village residents regarding the referendum. Direct costs are limited to printing and mailing of educational pieces to Village residents. (Invoices from printers will be provided.) These costs must be reimbursed by the winning supplier to Glenview Consulting within 60 days of the Master Supply Agreement being signed with the municipality. In this instance: Glenview incurred direct costs of: NONE.

4.14 - The Municipality will incur costs from ComEd to procure and/or refresh load data required for this bid. The Supplier agrees to reimburse the Municipality for these out of pocket costs, which are estimated at \$1,000 to \$1,500.

5.0 - Terms and Conditions

5.1 - The term of this agreement will be for a period determined by the Corporate Authorities of the Village. Supplier is to notify the Village at least 60 days prior to the end of the term to discuss renewal. At the end of the term of this agreement, if the agreement is not renewed or extended, Supplier agrees to return all residential and small commercial accounts back to ComEd.

5.2 - In the event that the information submitted is unclear, the Village may request additional information or explanation and/or pricing breakdowns for the purpose of evaluation and decision. The Company will answer all requests for additional information in writing, and these responses shall become part of the Company's electric service proposal. Companies failing to provide adequate information on any issues in a timely manner to allow for a comprehensive evaluation by the Village shall be considered unresponsive, and their proposals shall be subject to rejection.

5.3 - Suppliers must demonstrate compliance with all legal and regulatory requirements and must be certified and approved by all applicable or required Illinois agencies and Commonwealth Edison.

5.4 - Any exceptions to the specifications outlined in this RFP, or other considerations requested or required by the electric generation supplier must be submitted in writing describing in detail and submitted as part of the proposal. All Suppliers will be required and expected to meet the specifications in this RFP unless an exception is noted as part of the proposal being submitted.

5.5 - The Village reserves the right to add or delete accounts during the term of the supply agreement without penalty.

6.0 – Procedures

Please deliver signed proposal on or before May 3, 1:00 p.m. electronically by email to DH Hoover@NIMEC.net.

Do not contact the Mayor or Aldermen of the Village. Questions regarding this proposal should be directed to the NIMEC, who will administer the process:

David Hoover
NIMEC
417 Cherry Creek Lane
Prospect Heights, IL 60070
Telephone: (847) 392-9300
Fax:(847) 392-9303
Email: DH Hoover@NIMEC.net

7.0 - Other Information

7.1 - The Village reserves the right to reject any and all proposals, waive any informality in bidding, to negotiate with any or all companies submitting proposals and to enter into an agreement with any company for any services sought in this RFP.

7.2 - The Village reserves the right to later modify any portion of this request for proposals and to request additional specific information and submit additional questions in the discretion of the Village.

7.3 - All costs incurred by the Company in preparing a response to this proposal, including any meetings or visits, shall be at the Company s expense.

7.4 - Each Company shall be responsible for insuring that all Federal, State and Local laws are followed.

7.5- Your response will become the property of the Village once received.

7.6 - All suppliers wishing to provide a bid pursuant to this RFP must duly complete Attachment 1 providing for the price offer options of one year, two year and three year supply agreements, a duly complete and signed by an authorized agent Attachment 2, and a duly complete and signed by an authorized agent Attachment 3. All bids to be acceptable must include Attachments 1,2 and 3.

EXHIBIT B
BID RESPONSE

EXHIBIT B

Attachment 1 – Fixed Price Cost of Electricity

RESIDENTIAL (¢/kWh) No Civic Contribution Early Term Fee: \$25

Additional Renewable	12 Months	24 Months	36 Months
0%	4.40 ¢/kWh	4.55 ¢/kWh	5.09 ¢/kWh
25%	4.43 ¢/kWh	4.58 ¢/kWh	5.11 ¢/kWh
50%	4.45 ¢/kWh	4.60 ¢/kWh	5.13 ¢/kWh
100%	4.49 ¢/kWh	4.64 ¢/kWh	5.17 ¢/kWh

SMALL COMM'L (¢/kWh) No Civic Contribution Early Term Fee: \$50

Additional Renewable	12 Months	24 Months	36 Months
0%	4.40 ¢/kWh	4.45 ¢/kWh	4.89 ¢/kWh
25%	4.43 ¢/kWh	4.47 ¢/kWh	4.91 ¢/kWh
50%	4.45 ¢/kWh	4.49 ¢/kWh	4.93 ¢/kWh
100%	4.49 ¢/kWh	4.53 ¢/kWh	4.97 ¢/kWh

RESIDENTIAL (¢/kWh) with Civic Contribution Early Term Fee: \$25

Additional Renewable	12 Months	24 Months	36 Months
0%	4.53 ¢/kWh	4.62 ¢/kWh	5.13 ¢/kWh
25%	4.56 ¢/kWh	4.64 ¢/kWh	5.15 ¢/kWh
50%	4.58 ¢/kWh	4.66 ¢/kWh	5.17 ¢/kWh
100%	4.62 ¢/kWh	4.70 ¢/kWh	5.21 ¢/kWh

SMALL COMM'L (¢/kWh) with Civic Contribution Early Term Fee: \$50

Additional Renewable	12 Months	24 Months	36 Months
0%	4.52 ¢/kWh	4.52 ¢/kWh	4.94 ¢/kWh
25%	4.54 ¢/kWh	4.54 ¢/kWh	4.96 ¢/kWh
50%	4.56 ¢/kWh	4.56 ¢/kWh	4.98 ¢/kWh
100%	4.60 ¢/kWh	4.60 ¢/kWh	5.02 ¢/kWh

**Attachment 2
Administrative Fee Agreement**

I, Brenda Fargo, MANAGER, Gov't Aggregation of
(Officer) (Title)
First Energy Solutions
(Organization)

agree that said organization will pay the Glenview Consulting Group, Ltd. an administrative fee if chosen as the winning bidder in the RFP. The administrative fee shall be paid on at least a calendar quarterly basis. The fee amount is \$0.000275/kWh for all electricity consumed by and paid for members of the Buying Group. Only suppliers agreeing to the administrative fee and signing this Attachment are eligible to submit quotes. All checks are to be made payable to the Glenview Consulting Group, Ltd. and are due within 45 days of the end of the quarter. The term of the administrative fee is equal to that of the signed Service Agreement, including any extensions or renewals.

AND
PAID FOR
-KRC

Brenda Fargo
(Signature)

RFP Attachment 3

Bidderer agrees that all information presented in its Response to Qualifications for Municipal Aggregated Electricity Supply For Member Communities of the Northern Illinois Municipal Electric Collaborate, dated 4/23/12, are accurate and there have been no material changes to that information. Bidder also agrees to terms and conditions set forth in the Request for Proposal dated April 25, 2012. Any exceptions are noted on attached exhibit and made part of this Attachment.

Brenda Fargo
(Signature)

Brenda Fargo
(Name)

Manager, Gov't Aggregation
(Title)

First Energy Solutions
(Company)

Date: 5-3-12

EXHIBIT C:

PRICE

Residential Customer Class Price

4.64¢ per KWh – 100% Renewable

Commercial Customer Class Price:

4.53 ¢ per KWh – 100% Renewable

Termination Fee for Withdrawing Customers:

Residential: \$25.00 per utility account

Commercial: \$25.00 per utility account

Term: 24 months

Exhibit D
Electricity Purchase and Sale Terms and Conditions

The Municipality/City of _____ (Municipality), pursuant to the aggregation authority conferred upon it by the Illinois Power Agency Act, 20 ILCS 3855/1-92, and Municipality Ordinance No. _____, adopted by the Municipality's corporate authorities on _____, 2012 ("Aggregation Ordinance") establishing the Municipality's Electric Aggregation Program ("Program"), selected _____ ("Seller") to supply electricity and to administer enrollments as described below pursuant to that certain Agreement between the Municipality and Seller dated _____, 2012 ("Program Agreement"). The account holder (also referred to as "Buyer") for each eligible account associated with the service address referenced on the letter accompanying these Electricity Purchase and Sale Terms and Conditions (the "Account"), and Seller agree to the following terms and conditions. Seller and Buyer (individually referred to as "Party" and collectively as "Parties") agree to the following Electricity Purchase and Sale Terms and Conditions ("Agreement"), as of _____, 2012 for Opt-Out Enrollments or the date of Buyer's enrollment with Seller for Opt-In Enrollments (the "Effective Date").

1. Eligibility. To be eligible to participate in the Program, the Account(s) to be served (i) must be located within the Municipality's jurisdictional boundaries, (ii) must be served by ComEd (the "Utility"), and (iii) may not have franchised service with a municipal account.

a. Residential Customer Class. To be eligible for the Residential Rate, the Account(s) to be served must be designated by the Utility as belonging to one of the following delivery classes: (i) Residential Single Family Without Electric Space Heat Delivery Class, (ii) Residential Multi Family Without Electric Space Heat Delivery Class, (iii) Residential Single Family With Electric Space Heat Delivery Class, or (iv) Residential Multi Family With Electric Space Heat Delivery Class. Notwithstanding the foregoing, if the Account(s) to be served are (i) on a residential space heat rate, (ii) on an hourly billing rate, or (iii) under contract with another retail electric supplier, the Account(s) are not eligible for Opt-Out Enrollment as defined in Section 2a below but are eligible for Opt-In Enrollment as defined in Section 2b below.

b. Commercial Customer Class. To be eligible for the Commercial Rate, the Account(s) to be served must be designated by the Utility as belonging to one of the following delivery classes: (i) Watt-Hour Delivery Class or (ii) Small Load Delivery Class. Notwithstanding the foregoing, if the Account(s) to be served are (i) on an hourly billing rate or (ii) under contract with another retail electric supplier, the Account(s) are not eligible for Opt-Out Enrollment as defined in Section 2a below but are eligible for Opt-In Enrollment as defined in Section 2b below.

2. Enrollment.

a. Opt-Out Enrollment (Automatic Enrollments due to non-action by _____, 2012). Enrollment is automatic if (i) the Account(s) to be served is/are eligible and (ii) Buyer does not opt-out of the Program. **IF BUYER DOES NOT WISH TO PARTICIPATE IN THE PROGRAM, THEY MUST OPT-OUT BY _____, 2012. THE BUYER CAN OPT-OUT**

BY (I) RETURNING THE DESIGNATED POSTCARD, (II) CALLING SELLER TOLL-FREE AT (888) _____, OR (III) CONTACTING SELLER ONLINE AT WWW..

b. Opt-In Enrollment (Affirmative Enrollments). Enrollment is open to those who opt-out or are otherwise not automatically enrolled if (i) the Account(s) to be served is/are eligible and (ii) Buyer chooses to opt-in to the Program. A Buyer can Opt-In by (i) calling Seller toll-free at (888) _____ or (ii) contacting Seller online at www.

3. Term. This Agreement shall become binding on the Effective Date and shall remain in effect through Buyer's _____ 2013 meter reading ("Term"), unless (i) this Agreement is terminated pursuant to its terms or (ii) the Program Agreement is terminated by the Municipality pursuant to its terms. Notwithstanding the Effective Date, the obligation of Seller to sell and schedule electricity for delivery to Buyer and the obligation of Buyer to purchase, take and pay for electricity shall commence on the Account's _____ 2012 meter read (for Opt-Out Enrollments) or the first available meter read following Opt-In for Opt-In Enrollments, and shall be contingent upon: (a) successful enrollment by the Utility identified and (b) if applicable, the passage of the Rescission Period (defined in Section 4) without effective cancellation by Buyer. Successful enrollment by the Utility is dependent upon (i) the eligibility of Buyer's Utility account(s), as determined by the Utility, to take from a retail electric supplier and to participate in the Utility's purchase of receivables program (including service class and past payment history), and (ii) the accuracy and completeness of any information submitted by Buyer.

4. Rescission Period. Buyer may cancel its enrollment without penalty.

5. Price.

a. Fixed Rate. During the Term, Buyer shall pay the Fixed Rate multiplied by the billing cycle usage the Account(s) served.

i. Residential Rate. During the Term, Buyers to which the Residential Customer Class is applicable shall pay the Fixed Rate of _____ cents per kWh.

ii. Commercial Rate. During the Term, Buyers to which the Commercial Customer Class is applicable shall pay the Fixed Rate of _____ cents per kWh.

b. Switching Fees. Seller does not charge Buyer a separate fee to switch to Seller's service. If ComEd charges a fee for enrolling the Account(s) to Seller's service, Seller will reimburse Buyer for any such fees within thirty (30) days. If Buyer is currently receiving electricity pursuant to an agreement with another retail electric supplier, that supplier may charge Buyer for switching electricity providers. Seller will not reimburse Buyer for any such fees.

c. Price Match. If the Utility's Price to Compare for the Account(s)' rate class are set below the Fixed Rate during the Term of this Agreement, Seller will either (a) lower the Fixed Rate identified above to match that of the Utility's applicable Price to Compare or (b) terminate this Agreement without damages or early termination fees to either Party. "Utility's Price to Compare" shall mean ComEd's "Price to Compare" for the applicable rate class, as posted on the

ICC website (www.pluginillinois.org), which includes ComEd's electricity supply charge plus ComEd's transmission services charge, but shall not include ComEd's purchased electricity adjustment. Notwithstanding the foregoing, termination (in circumstances described in this paragraph) may be avoided if the Village determines that the Aggregation Program should remain in place at the Fixed Rate agreed to without the need to match. In such event, the parties shall enter into a written agreement and the Village shall not waive any rights set forth herein by allowing the fixed rate to remain in place without the need to match unless the Village specifically agrees in writing.

6. **Expiration.** Absent termination prior to the end of the Term as permitted herein, in the event the Program Agreement is not renewed by the Municipality prior to the end of the Term of this Agreement, Buyer will be restored to tariffed service at the end of the Term.

7. **Billing and Payment.** Buyer will be invoiced for Seller's charges and the Utility's delivery charges on monthly invoice(s) Buyer receives from the Utility, and such billing and payment shall be subject to the applicable Utility rules regarding billing and payment procedures. Seller's charges or credits not invoiced through the Utility shall be invoiced or credited, respectively, directly by Seller. Seller may cause the Utility to correct previous invoices in the event of invoicing errors.

8. **Taxes.** Any tax levied against Seller by any governmental entity, exclusive of Seller's income tax or taxes levied on Seller's real or personal property that must be paid by Seller shall be passed through to and borne and reimbursed by Buyer. Buyer must provide Seller with any applicable exemption certificates. Buyer shall pay any such taxes unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid.

9. **Termination; Remedies.** If either Party defaults on its obligations under this Agreement (which may include Buyer's switching to another retail electric supplier or the Utility or Buyer's failure to pay the Utility), the other Party may terminate this Agreement, as applicable. Seller reserves the right to charge Buyer an early termination fee for Buyer's termination after the Rescission Period of Section 4 that has not resulted from Seller's default. Seller may invoice Buyer directly for any early termination fees and payment of any early termination fees shall be due within thirty (30) days of the invoice date. Buyer agrees damages would be difficult to quantify upon a default and agree that this is not a penalty. The early termination fee shall total \$0.00 per Account, provided however, Seller will waive such early termination fee if Buyer moves (either within or outside of the Municipality boundaries), and provides notice to Seller that Buyer is moving prior to termination. Notwithstanding the foregoing, in the event the Municipality terminates the Program Agreement prior to the end of the Term of this Agreement, Seller will waive the early termination fee and return Buyer's Account(s) to ComEd tariffed service on the second meter read following termination. **SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES OR PENALTIES RESULTING FROM THE RETURN OF BUYER'S ACCOUNT(S) TO THE UTILITY'S TARIFFED SERVICE, INCLUDING CLAIMS RELATING TO THE TARIFFED SERVICE PRICE BEING HIGHER THAN THE FIXED RATE HEREIN.**

10. Limitations. ALL ELECTRICITY SOLD HEREUNDER IS PROVIDED "AS IS" AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN AGREEMENT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

11. Force Majeure. Except for Buyer's obligation to pay Seller timely, neither Party shall be liable to the other for failure to perform an obligation if the non-performing Party was prevented from performing due to an event beyond their reasonable control, that could not be remedied by the exercise of due diligence and that was not reasonably foreseeable, including without limitation, acts of God, a condition resulting from the curtailment of electricity supply or interruption or curtailment of transmission on the electric transmission and/or distribution system, interruption of Utility service, terrorist acts or wars, and force majeure events of the Utility or independent system operator.

12. Questions, Complaints, and Concerns. Buyer may contact Seller by calling 1-888-_____, at Seller's website at www._____ or by writing to _____, Attn: Customer Service. For issues concerning this Agreement, Seller will attempt to resolve the matter within five (5) business days after receiving the call or letter. If Buyer is not satisfied with the response, or to obtain consumer education materials, Buyer can contact the Illinois Commerce Commission's Consumer Services Division at 1-800-524-0795 or 1-800-858-9277 for TTY hearing-impaired customers or visit the Illinois Commerce Commission's website at www.icc.illinois.gov. Buyer may also contact the Illinois Attorney General's Office at 1-800-386-5438 (Northern Illinois), 1-800-243-0618 (Central Illinois), or 1-800-243-0607 (Southern Illinois).

13. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard for the conflicts of law provisions thereof. Title, possession, control of the electricity, and risk of loss will pass from Seller to Buyer at the delivery point, which shall be the Utility. Buyer appoints Seller as its agent for the purposes of effectuating delivery, including for receipt of billing and usage data from the Utility. Subject to regulatory approvals and notice from Seller and the terms of the Program Agreement, Seller may assign this Agreement without Buyer's consent. Buyer may assign this Agreement only with Seller's prior written consent. This Agreement (including without limitation the Account identification) shall be considered a Letter of Agency and constitutes the entire agreement between the Parties, superseding all verbal and written understandings. There are no third party beneficiaries to this Agreement and none are intended. This Agreement shall only be amended in writing signed by both Parties or with Notice from Seller to Buyer as described under Section 4 above. Buyer should contact the Utility in the event of an electric emergency at 1-800-Edison-1 (residential) or 1-877-4-ComEd-1 (commercial). Future correspondence may be sent by Seller to Buyer via first class mail and/or electronic mail.

Schedule E

Implementation Schedule

Days from Contract Signing and receipt of ComEd data

- 7: Opt Out letter in mail
- 14: Opt Out response
- 2: Mail Response
- 2*: Supplier to send list to ComEd
- 10: ComEd to supply acct numbers
- 2: Supplier to finalize list
- 3: Cushion day
- 20: Supplier to DASR accounts
(includes ComEd rescission letter/period)
- 60

* business days

EXHIBIT F

INSURANCE COVERAGES

- A. Worker's Compensation and Employer's Liability with limits not less than:
- (1) Worker's Compensation; Statutory;
 - (2) Employer's Liability:
 - \$500,000 injury-per occurrence
 - \$500,000 disease-per employee
 - \$500,000 disease-policy limit
- Such insurance shall evidence that coverage applies in the State of Illinois.
- B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.
- All employees shall be included as insureds.
- C. Comprehensive General Liability
- a. with coverage written on an "occurrence" basis with limits no less than:
 - \$1,000,000 Bodily Injury and Property Damage Combined Single LimitCoverage is to be written on an "occurrence" bases.
- Coverages shall include:
- Broad Form Property Damage Endorsement
 - Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
- b. with coverage written on a "claims made" basis with limits no less than:
 - \$1,000,000 Bodily Injury and Property Damage Combined Single LimitCoverage is to be written on an "daims made" bases.
- Coverages shall include:
- Broad Form Property Damage Endorsement
 - Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
- D. Professional Liability Insurance. With a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and covering Consultant against all sums that Consultant may be obligated to pay on account of any liability arising out of the Contract.
- E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- F. Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:

Worker's Compensation

Professional Liability

Each such additional Insured endorsement shall identify Owner as follows: Village of , including its Board members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives.

- G. Other Parties as Additional Insureds. In addition to Owner, the following parties shall be named as additional insured on the following policies:

Additional Insured Policy or Policies