

**REQUEST FOR QUALIFICATION (RFQ) FOR  
ELECTRICITY AGGREGATION SUPPLY SERVICES  
FOR  
THE CITY OF CHICAGO**

**Specification No. 112257**

Required for use by:

**CITY OF CHICAGO  
(Department of Fleet and Facility Management)**



This RFQ distributed by:

**CITY OF CHICAGO  
(Department of Procurement Services)**

All Statements of Qualification and other communications must be addressed and returned to:

Jamie L. Rhee, Chief Procurement Officer  
Attention: Altha Riley, Department of Procurement Services  
Bid and Bond Room - Room 301 City Hall  
121 North LaSalle Street  
Chicago, Illinois 60602

**A Pre-Submittal Conference will be held on Monday, November 05, 2012 at 10:00 a.m., Central Time, at City Hall, 11<sup>th</sup> Floor, Conference Room 1103, 121 N LaSalle St, Chicago, Illinois. Attendance is Non-Mandatory, but encouraged.**

**ALL RESPONSES MUST BE RECEIVED BY 4:00PM CENTRAL TIME ON  
NOVEMBER 21, 2012**

**MAYOR RAHM EMANUEL  
JAMIE L. RHEE  
CHIEF PROCUREMENT OFFICER**

**Altha Riley,  
Contract Negotiator, Department of Procurement Services, (312) 744-0762**

**CITY OF CHICAGO  
REQUEST FOR QUALIFICATION FOR  
ELECTRICITY AGGREGATION SUPPLY SERVICES  
SPECIFICATION NO. 112257**

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**CITY OF CHICAGO**  
**REQUEST FOR QUALIFICATION FOR**  
**ELECTRICITY AGGREGATION SUPPLY SERVICES**  
**RFQ No. 112257**

The City of Chicago (the City), Illinois acting by and through its Department Fleet and Facility Management invites firms to respond to this Request for Qualification (RFQ) for electricity aggregation supply services. This RFQ describes a two-step process: (i) Respondents must submit certain documentation and meet certain requirements detailed herein in order to be deemed "Qualified"; (ii) Qualified Respondents may submit bids in a Bid Process in which the bidder with the lowest Margin will be awarded a contract for electricity aggregation supply services as described herein.

Qualified Respondents are expected to meet and maintain all applicable requirements as outlined in this document during all phases of his process and, if applicable, during a contract term. At the time of the Bid Process, the Qualified Respondent will have to certify that it is in compliance with all of the applicable requirements outlined in this RFQ.

**All capitalized terms herein, if not otherwise defined by the text, will have the definitions assigned to such terms in Attachment 5, Plan of Operation and Governance, or Exhibit 6, Agreement.**

**Firms or individuals wishing to become Qualified for bidding further must submit responses that meet the requirements specified herein, by no later than November 21, , 2012 at 4:00 Central Time, addressed to:**

Jamie L. Rhee, Chief Procurement Officer  
Department of Procurement Services  
Bid and Bond Room  
Room 301, City Hall  
121 North LaSalle Street  
Chicago, Illinois 60602

All materials related to the RFQ will be available on the internet at: <http://www.cityofchicago.org/bids>.

In the event you do not have download capability, all materials may be obtained from the City of Chicago Department of Procurement Services' Bid & Bond Room, located in Room 301, City Hall, 121 N. LaSalle in Chicago, IL 60602.

A Respondent that chooses to download an RFQ solicitation instead of picking it up in person will be responsible for checking the aforementioned web site for clarifications and/or addenda. Failure to obtain clarifications and/or addenda from the web site shall not relieve Respondent from being bound by any additional terms and conditions in the clarifications and/or addenda, or from considering additional information contained therein in preparing its proposal. Note there may be multiple clarifications and/or addenda. Any harm to a Respondent resulting from such failure shall not be valid grounds for a protest against award(s) made under this solicitation.

**All Respondents are responsible for obtaining all RFQ materials. If Respondent chooses to download and print the RFQ document, the Respondent must contact the City of Chicago, Department of Procurement Services, Bid & Bond Room by emailing [BidandBond@cityofchicago.org](mailto:BidandBond@cityofchicago.org) referencing Specification No. 11257 to register**

Respondent's company as an RFQ document holder, which will enable the Respondent to receive any future clarifications and/or addenda related to this RFQ.

## SECTION 1 – INTRODUCTION

### A. BACKGROUND

Pursuant to the Illinois Power Agency Act (20 ILCS 3855/1-92), the City is authorized to aggregate the loads of residential and small commercial retail electricity accounts located within the City's corporate limits upon the passage of a voter referendum authorizing it to do so. Once authorized, the City may enter into an agreement with one or more Alternative Retail Electricity Supplier ("ARES") to facilitate the purchase of electricity and related services and equipment on behalf of the City's Eligible Retail Customers. A voter referendum authorizing the City to conduct an aggregation program will be held on November 6, 2012. It is expected that on November 15, 2012, the Chicago City Council will consider an ordinance that will approve the Plan of Operation and Governance and, pursuant to section 1-92 of the Illinois Power Agency Act (20 ILCS 3855/1-92), provide for the authority to aggregate residential and small commercial retail loads for the purpose of "solicit[ing] bids and enter[ing] into service agreements to facilitate for those loads the sale and purchase of electricity and related services and equipment."

Prior to the referendum, the City seeks a pool of Qualified Respondents. If the referendum passes and the Chicago City Council enacts the requisite ordinance, the City intends to conduct a Bid Process to select from the Qualified Respondents a Supplier for the Program on the basis of lowest Margin submitted by a Qualified Respondent.

### B. TERMS AND SCOPE OF SERVICES

The terms and conditions of the Agreement are spelled out in Attachment 6, Draft Agreement. Respondents will have a chance to comment on the Draft Agreement in their Qualification Submittal. In an Addendum to this RFQ, the City will issue a final version of the Agreement. At the time of the Bid Process, a signed Agreement must be submitted along with the bid. The scope of services to be provided by a Supplier would include, but not be limited to, the following tasks:

- 1. Manage Program Enrollments.** Make all arrangements as necessary on behalf of the City to notify Eligible Retail Customers of their right to opt out of the Program. Besides the initial opt-out period, managing program enrollments also includes providing for subsequent opt-out requests and adding accounts established after the initial opt-out period. Additionally, manage and track through a database the accounts that are enrolled into the Program and the accounts that exit the Program.
- 2. Deliver Electricity Supply.** Provide firm full requirements of electricity to Program Members and Associate Members under a Fixed Price. The supply must meet the minimum requirements of the Illinois Renewable Portfolio Standard.
- 3. Maintain Certain Protections.** Ensure that Members and Associate Members in the Program continue receiving a single monthly utility bill from ComEd; are afforded the benefits of the ComEd Purchase of Receivables offering; are not be charged any fees or penalties for entering or exiting the Program at any time; receive a guarantee that their Fixed Price will not exceed the ComEd Price to Compare; and not lose access to special assistance programs such as PIPP.
- 4. Deliver high levels of Customer Service.** Ensure that Members and Associate Members receive the highest levels of customer service and responsiveness, including but not limited to providing Members and Associate Members with (i) access to their account's historical electricity

consumption and costs; (ii) information concerning the opportunities and advantages for energy efficiency and distributed generation; and (ii) analytical tools to aid in establishing more efficient use of electricity.

- 5. Other Terms/Services.** Provide the City with the following:
- a. Indemnification for any costs or penalties arising from the delivery of electricity to Members and Associate Members.
  - b. Acknowledge it owes the City a fiduciary duty in the performance of its management and agency services provided for under the Agreement.
  - c. Commitment that the Supplier will consult with City before executing any energy decisions. Explicit details will be given during post award meeting.
  - d. Provide a range of financial management options to secure and minimize electricity costs for Members and Associate Members.
  - e. Reimburse City for costs and assessments.
  - f. Provide reporting on Program metrics on a regular basis.
  - g. Assist the City in promoting membership in the Program.

**C. SUBMISSION OF MATERIALS AND SCHEDULE**

- 1. Submittal Delivery.** Respondents seeking qualification under this RFQ must submit three (3) original copies and one (1) electronic copy of their Submittals (See Section 3) to:

**Jamie L. Rhee, Chief Procurement Officer**  
**Department of Procurement Services**  
**Bid and Bond Room**  
**Room 301, City Hall**  
**121 North LaSalle Street**  
**Chicago, Illinois 60602**

Electronic copies may be submitted on CD or other standard memory storage devices.

- 2. Timeline.** Respondents are notified of the following anticipated schedule milestones and deadlines. The City is not bound to this schedule. Notice of changes to the schedule (if any) will be noted on the City’s procurement website at: <http://www.cityofchicago.org/bids>. Respondents are responsible for monitoring the procurement website to receive notice of schedule changes.

Electricity Aggregation Program Tasks	Anticipated Date
<b>Request for Qualifications (RFQ)</b>	
1. City issues RFQ	October 29, 2012
2. Non-Mandatory Pre-Submittal Conference	November 5, 2012
3. Due date for Questions and Exceptions/Requests to Revise Attachment 6 (Draft Agreement)/Requests to Revise Attachment 5 (Draft Plan)	November 9, 2012
4. City issues Responses to Questions and Exceptions/ Requests to Revise Attachment 6 (Agreement)	November 16, 2012

5. Qualification Submission Due	November 21, 2012
6. City announces pool of Qualified firms	December 5, 2012
<b>Bid Process*</b>	
1. City passes Ordinance(s) to:	November 15, 2012
a. Adopt Plan of Governance and Operation	
b. Establish the Chicago Electricity Aggregation	
c. Assign Agreement execution authority to Designee	
2. City Issues Bid Document	December 5, 2012
3. Bid Submission Date	December 7, 2012
4. City and Supplier execute Agreement	December 7, 2012
5. Supplier commences commodity pricing	December 7, 2012
6. City accepts commodity pricing	December, 2012
7. Account enrollment process commences	December, 2012

\* Bid Process tasks will only occur if the City receives authorization to establish an electricity aggregation program through the referendum on November 2012.

**3. Additional Information.** The City will hold a Pre-Submittal Conference in Room 1103, City Hall, 121 N. LaSalle Street, Chicago, Illinois at 10:00 a.m., Central Time on November 5, 2012. All parties interested in responding to this RFQ are urged to attend in person, however a teleconference number is provided for those unable to attend in person. The City requests that all parties planning on attending the Pre-Submittal Conference notify via email to [electricityaggregation@cityofchicago.org](mailto:electricityaggregation@cityofchicago.org) prior to the Pre-Submittal Conference.

The subject line of the email must refer to Request for Qualification for Electricity Aggregation Supply Services, Specification No. 112257 and the body of the email shall include the names, titles, email address and phone number of each attendee, and indicate whether the attendee is participating in person or via teleconference.

To participate in the teleconference, dial (605) 477-2100. The participation code is 882396#.

Submission of questions, requests for clarifications or proposed modifications or exceptions to the Plan in Attachment 5 and/or Electricity Aggregation Program Agreement in Attachment 6 should be addressed in writing to the individual listed below by 4pm Central Time on November 9, 2012. Any oral communication will be considered unofficial and non-binding on the City. Respondents should rely only on written statements issued by the individual listed below.

**Altha Riley**  
**Department of Procurement Services**  
**City Hall**  
**121 North LaSalle Street, Room 403**  
**Chicago, Illinois 60602**  
[Altha.riley@cityofchicago.org](mailto:Altha.riley@cityofchicago.org)

**UNAUTHORIZED CONTACT REGARDING THIS REQUEST FOR QUALIFICATION WITH ANY OTHER CITY EMPLOYEES MAY RESULT IN DISQUALIFICATION.**

All materials and information submitted in response to this RFQ will become the property of the City. Materials may not be changed, amended, or modified after the qualifications submission

date. However, a Submittal submitted prior to the qualifications submission date, may be withdrawn and resubmitted any time prior to November 21, 2012 at 4:00 p.m., Central Time. The City will not provide compensation to Respondents for any expenses incurred by the Respondent for proposal preparation or for any demonstrations that may be made, unless otherwise expressly indicated in writing.

The City reserves the right to terminate this RFQ for any reason at any stage of this RFQ process. The receipt of Submittals or other documents will in no way obligate the City to enter into any contract of any kind with any party or Respondent. If it becomes necessary to revise any part of the RFQ or otherwise provide additional information, an addendum will be issued by the City and furnished to all firms that have received copies of the original RFQ.

## **SECTION 2 – QUALIFICATION SUBMITTAL FORMAT & CONTENTS**

The Qualification Submittal must include all components listed below to be considered responsive. All Submittals must be in a format compatible with Microsoft Word with 1” margins, double-spaced, single-sided and must include the requested information to be considered for Qualification. Respondents will not have an opportunity to submit additional information at a later date.

### **A. COVER LETTER**

- 1. Firm and location.** Indicate the full, legal company name of entity, the address of its headquarters and the address of the office to which this project will be assigned.
- 2. Contact person.** Clearly identify the name, address and telephone number of the contact person(s) for any and all communications pertaining to this RFQ.
- 3. Authorized submittal.** Include name, signature, title, address, telephone number of the person authorized to submit and sign the Submittal.
- 4. Commitment.** The cover letter shall be on the Respondent’s letterhead. The cover letter must contain a commitment to provide the services described in this RFQ (in the case that Respondent is awarded an Agreement through a forthcoming Bid Process) and in accordance with the terms of the Agreement and Plan of Operation and Governance, and all applicable laws and regulations of the State of Illinois and the City of Chicago.

### **B. COMPANY INFORMATION**

- 1. Corporate Overview.** Provide a concise overview of the company, including a brief narrative of the firm’s professional services as they relate to this RFQ and a description of the company’s history of performance and knowledge of electricity in PJM, Illinois, and ComEd service region. Identify the legal form of the Respondent entity, its applicable taxpayer identification number, and confirm that the entity is duly licensed and authorized to do business in Illinois and Chicago.
- 2. Experience.** Indicate how many years the company has been operating within the ComEd service territory, including, but not limited to, written and/or graphic evidence of not less than three (3) current or previous significant electricity supply projects that Respondent has completed in the past three (3) years that are similar in scope to the work described in this RFQ. Indicate the volumes of retail electricity sold in Illinois and the ComEd service region in kWh per year for the last three (3) years, and the number of accounts served over that period. Indicate the number and

location of electricity aggregation programs the company is serving in Illinois. Also, identify the three (3) largest commercial and industrial customers – in terms of load and number of accounts - the company has served in the past three (3) years.

- 3. Customer Satisfaction.** Submit the results of the ‘Complaint Scorecard’ compiled by the Illinois Commerce Commission for Respondent for the period starting September, 2011. Provide a narrative description of how the customer service systems and assets to be assigned to the Program will provide higher than average levels of customer satisfaction including a commitment to making specific enhancements to customer service assets in the event the “Complaint Scorecard” ratings for the Proposer falls to a two-star designation for more than a one-month duration. Additionally, the Proposer should submit a statement indicating that it will maintain customer information as confidential in accordance with applicable state laws governing utility customer data.
- 4. ARES Status.** Identify whether the company is a certified ARES authorized to serve small commercial retail and residential accounts located in the ComEd service region. Confirm that the Respondent can lawfully provide the services as described in this RFQ and in accordance with the terms of the City of Chicago Standard Terms and Conditions in addition to the terms and conditions of the Agreement and that the Respondent holds all applicable federal, state and local licenses in order to do so.
- 5. Financial Statements.** Provide a copy of the Respondent’s most recent audited financial statements for the most recent fiscal year. Additionally, provide a copy of the most recent quarterly financial statement. The City reserves the right to accept or reject any financial documentation other than the financial statements requested in this section. Firms operating as subsidiaries to larger organizations should submit the parent organization’s financial statements. In addition, firms operating as subsidiaries are required to provide a letter of acknowledgement from the parent firm citing that the parent company supports the financial liabilities and obligations of the Respondent.
- 6. References.** Provide customer references for the Respondent’s three (3) largest private sector and three (3) largest public sector customers. References in ComEd territory are preferred, but not necessary. References concerning municipal aggregation programs operated by Respondent are preferable. For each reference, provide customer name, contact name, position, phone number, email address, and the dates serviced. The City reserves the right to make independent inquiries of Respondent’s clients not listed as references in the Submittal.
- 7. Key Personnel Committed to the Chicago Program.** Submit resumes for key personnel who would be assigned to the City Program in the case that an Agreement is entered as a result of a RFQ. Note the current number and size in terms of load of customers served by the personnel to be committed to the City Program so work load can be gauged.
- 8. Legal Actions.** Provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past five (5) years in which (i) Respondent or any division, subsidiary or parent company of Respondent, or (ii) any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation, has been a:
  - a. debtor in bankruptcy; or
  - b. defendant in a legal action for deficient performance under a contract ; or
  - c. defendant in a legal action for violation of a statute; or



- d. defendant in a legal action related to service reliability; or
- e. respondent in an administrative action for deficient performance under a contract;
- f. respondent in an administrative action for violation of a statute; or
- g. respondent in an administrative action related to service reliability; or
- h. defendant in any criminal action; or
- i. named insured of an insurance policy for which the insurer has paid a claim related to deficient performance under a contract; or
- j. named insured of an insurance policy for which the insurer has paid a claim related to violation of a statute; or
- k. named insured of an insurance policy for which the insurer has paid a claim related to service reliability; or
- l. principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to deficient performance under a contract; or
- m. principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to violation of a statute; or
- n. principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to related to service reliability; or
- o. defendant or Respondent in a governmental inquiry or action regarding accuracy of preparation of financial statements or disclosure documents; or
- p. party to a settlement where electricity market manipulation on the part of the Respondent has been alleged.

**9. Insurance.** Respondents are required to submit evidence of ability to obtain the insurance coverage in the appropriate amounts specified in the Attachment 2. Respondents awarded full requirements contracts through a bid process must submit evidence of insurance in the amounts specified in the Special Provisions attached in Schedule B within two (2) weeks of signed confirmation pages.

**10. Affirmation of Compliance.** Provide an affirmation that the company with the terms of the Agreement and the Plan. Note, that Qualified Bidders that submit Bids must submit an Agreement executed by an authorized signatory at the time it submits its Bid. The Agreement will be attached to the City's Bid Request and may **NOT** be modified in any way. In other words, companies submitting Bids in response to the City's Bid Request **MUST** accept and execute the Agreement that will be attached thereto.

**11. Economic Disclosure Statement and Affidavit (EDS).** Submit a completed and executed Economic Disclosure Statement and Affidavit and Attachment A. **See Online City of Chicago EDS Instructions and Attachment A Online EDS Acknowledgement in Attachment 1.** If Respondent is a business entity other than a corporation, then each member, partner, etc., of Respondent must complete an EDS, as applicable, per the instructions on the EDS form. In addition, any entity that has an interest in Respondent or in one or more of its members, partners, etc., and is required pursuant to the Municipal Purchasing Act for Cities of 500,000 or More Population (65 ILCS 5/8-10-8.5) or Chapter 2-154 of the Municipal Code of Chicago to provide a disclosure must submit a completed and executed EDS as an "entity holding an interest in an Applicant" as described in the EDS. All affidavits must be notarized. **Upon completion of Online EDS, Respondent shall submit a copy of 2 documents with their proposal: 1) Certificate of Filing printed from system and 2) hardcopy of the executed Attachment A, Online EDS Acknowledgement form in lieu of hardcopy EDS forms.**

Subcontractors may be asked, at the City's discretion, to provide an EDS during the evaluation process.

- 12. Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) Participation.** Respondent must complete and submit the forms that are attached to this RFQ in Attachment 3 to evidence Respondent's proposed MBE/WBE participation in some aspect of the contract. The current Minority Business Enterprise (MBE) participation goal is 25% of the annual dollar value of non-commodity-related revenues, and the current Women Business Enterprise (WBE) participation goal is 5% of the annual dollar value of non-commodity-related revenues.

The City has identified a number of potential opportunities for MBE/WBE participation for the Electricity Aggregation Supply Services. These opportunities include, but are not limited to: Customer Service Support, Training for Customer Service Support staff, Public Relations Consultant, Mailing Services, Travel Services, Promotional Supplies, IT Consulting, Web Portal Design, Printing and Mailing Services.

Respondent must submit a completed Schedule D-1 and obtain a separate Schedule C-1 completed and signed by each proposed MBE and WBE firm describing the services to be provided. With each Schedule C-1 form, Respondent should submit a current Letter of Certification issued by the City of Chicago. The proposed MBE or WBE firm must be certified by the City of Chicago at the time of response submission. The City reserves the right to require Respondents to replace any proposed MBE/WBE that is not certified with the City of Chicago.

Further, the percentage participation for each MBE or WBE firm on the individual Schedule C-1s should match the percentages for each MBE or WBE firm listed on the Schedule D-1. All schedules submitted must be original signature. Failure to submit these documents, or incomplete documents, may result in Respondent being declared non-responsive.

In order to determine the best way in which to achieve and document MBE/WBE participation, Respondent must refer to the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment attached to this RFQ as Attachment 3. To locate MBE/WBE firms who are currently certified with the City of Chicago in various areas of specialty, you may search the City's MBE/WBE Directory Database on the City's website: [www.cityofchicago.org/Procurement](http://www.cityofchicago.org/Procurement).

### **C. SPECIAL QUALIFICATION ELEMENTS**

- 1. Power Content Labeling.** Provide an assessment of the company's ability to report the fuel sources that would support the electricity supply requirements the company would secure for the Program if it was selected through the RFQ. Respondents must be capable of securing supply options that minimize carbon emissions and nuclear waste while maintaining competitive prices. In particular, potential suppliers should highlight how their proposed power mix will utilize local renewable assets, including existing assets currently operating without long-term power purchasing agreements. In addition, Respondents must be willing to structure supply agreements in a manner that would facilitate the transfer of those agreements to a new supplier in the event the Proposer were to become unable to fulfill its obligations under the Agreement. The Proposer must clearly

indicate that it recognizes and will facilitate existing and future bilateral contracts with entities specified by the City for Electricity Supply and services, and treat such contracts as pass-through expenses without additional markup beyond the terms allowed in the Agreement.

Fuel/Plant Type	% of Power Supply Portfolio	Anticipated Cost Premium above Average Market Price
<b>Nuclear</b>		
<b>Coal</b>		
<b>Natural Gas</b>		
Combined Cycle		
Simple Cycle		
<b>Biomass</b>		
Illinois resources		
Non-Illinois resources		
<b>Hydro</b>		
Illinois resources		
Non-Illinois resources		
<b>Solar Thermal</b>		
Illinois resources		
Non-Illinois resources		
<b>Solar PV</b>		
Illinois resources		
Non-Illinois resources		
<b>Wind</b>		
Illinois resources		
Non-Illinois resources		
<b>Other</b>		
<b>Total</b>		

2. **Renewable Portfolio Standard Compliance.** Submit a plan that identifies the measures to be taken to ensure compliance with the Illinois Renewable Portfolio Standard. At minimum, the plan should include a description of the calculation of the Alternative Compliance Payments, and the process the Proposer will use to identify and secure Renewable Energy Resources on behalf of program Members. Additionally, the plan should indicate the Proposer’s willingness and ability to secure any RECs generated by renewable generation assets under long-term power purchase agreements with ComEd, and to utilize those RECs for compliance purposes on behalf of the program Members.
  
3. **Enrollment Schedule.** Submit a detailed schedule and task description report identifying the measures the company will take to ensure timely enrollment of Member accounts. The schedule must identify key deliverables, responsible parties, and projected due dates for all tasks starting with the opt-out notification process through the acceptance of Direct Access Service Requests (DASR) for Member and Associate Member accounts. To assist in evaluation, assume that a Fixed

Price is accepted and the Agreement and pricing attachments are fully executed on December 7, 2012 and that the enrollment process commences that day. The Respondent must identify the highest number of accounts it has enrolled into the ComEd territory in a single day, a single week, and a single month in the past three (3) years. The Respondent must identify possible causes for delay in the enrollment process, propose options for mitigating delays, and commit to paying damages for delays in the enrollment schedule that are due to the Respondent's failure to meet performance milestones identified in the schedule. Damages will be calculated as the number of accounts not enrolled multiplied by the Price to Compare multiplied by the number of kWh those accounts consume over the period between the targeted and actual enrollment dates.

- 4. Billing Schedule.** Submit an assessment of the company's internal data systems that facilitate customer billing through the ComEd Utility Consolidated Billing option. The submittal should report the maximum potential number of records the system can functionally process in a single day. The Respondent must identify the highest number of accounts it has billed through the Electronic Data Interchange with ComEd in a single day during the past three (3) years. Proposers should report the results of any recent system upgrades or capacity tests.
- 5. Program Expansion for Associate Members.** Provide a plan identifying the company's approach to providing electricity supply pricing to non-residential electricity account holders located within the City that are not Eligible Retail Customers. Specify the frequency of method of generating pricing for such accounts, and the terms and conditions the company would seek to require for customer supply agreements delivered through this process.
- 6. Member and Associate Member Energy Information Systems.** Provide a description of the types of customer account information (historical consumption, costs, comparisons with regional norms, information concerning energy efficiency, distributed energy, and demand response options) that the company can provide and the means of conveying such information to Members and Associate Members (i.e. web portal, newsletters, education programs)
- 7. Toll Free Call Center.** Provide a description and proof of operation of the Proposer's call center. The call center must be available to Program Members and Associate Members 24 hours a day, seven days a week. The call center must be located in the United States. Trained company representatives shall be available to respond to customer telephone inquiries Monday through Friday from 6:00 am CDT to 9:00 pm CDT. Outside of these hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after required hours shall be responded to by a trained company representative on the next business day. Under normal operating conditions, telephone answer times by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. Provide a listing of the languages supported through the call center, and the plan for providing information and assistance to hearing impaired Members
- 8. Sample Website.** Submit representative screenshots of the type of informational website the company would develop for the Program. The sample materials should clearly represent the nature and level of detail of the information that will be readily available to Members. The Respondent must also provide a proposed date for the launch of the website, and also provide a detailed description of the process the company will follow to work with the City to update and modify content on an ongoing basis.
- 9. Sample customer materials.** Submit representative samples of opt-out notification letters and printed customer informational materials to be used in the Program. The Respondent must indicate whether such materials are to be supplied through in-house resources or through outside suppliers, and also provide a detailed description of the

process the company will follow to work with the City to authorize and modify content on an ongoing basis. **10. Standard Operations Manual.** Submit a current copy of the company's standard operating manual (or equivalent internal process description and management documents). The submittal should provide a high level of detail and description concerning how the company manages opt-out processes, database management, customer service, call-centers, consumer outreach and education, and reporting. **11. Outside Suppliers.** Provide a listing of all subcontractors and descriptions of the services provided by such parties that the company is likely to engage if it is selected as the Supplier to the Program. The Submittal should indicate the length of the relationship between the company and the subcontractor as well as the means by which the subcontractor was selected by the company (i.e. competitive selection process or sole sourcing). **12.**

**Remittances.** Submit a description of the method the company utilizes to issue remittances to municipal aggregators. The submittal should include a detailed description of the calculations used to adjust the Fixed Price for Members to finance remittances. The City is considering specifying a remittance in the future RFP for the purposes of supporting certain clean energy and energy efficiency projects, and to recover some or all of the costs associated with creating and maintaining the Program. **13. Energy Efficiency, Distributed Generation, and Demand Response.** Submit a range of options for additional energy efficiency, distributed generation, and demand response services to Program Members, including options for solar installations at municipal, commercial, and residential buildings, and the anticipated price premium and impact of each option.

## **SECTION 3 - EVALUATING QUALIFICATION SUBMITTALS**

An Evaluation Committee, which will include the representatives of the Department of Fleet and Facility Management, Department of Law, and may include representatives of other departments of the City, will review and evaluate the Qualification Submittals, as described below. In addition, the Evaluation Committee may include non-voting members who are not employees of the City.

### **A. EVALUATION**

As part of the evaluation process, the Evaluation Committee will review the information required by Sections 2.A, 2.B, and 2.C above, for each Qualification Submittal received. The Evaluation Committee may also review any other information that is available to it, including, but not limited to, information gained by checking references and by investigating the Respondent's financial condition.

The City reserves the right to seek clarification of any information that is submitted by any Respondent in any portion of its Qualification Submittal or to request additional information during the evaluation process. Any material misrepresentation made may void such Submittal and disqualify the Respondent from further consideration.

In addition, the Evaluation Committee will review the Qualification Submittals using the following criteria (not necessarily listed in order of importance):

1. Overall quality and completeness of response to the RFQ;
2. Qualification as a certified Alternative Retail Electricity Supplier authorized to serve as a supplier to both residential and small commercial accounts served by ComEd.
3. Capability and commitment to providing a cleaner power supply without increasing costs;

4. Capability and commitment to enrolling accounts into the Program pursuant to a defined schedule and guarantee of enrollment certainty;
5. Capability to facilitate monthly billing for all accounts enrolled in the Program;
6. Ability to ensure uninterrupted program status for PIPP participants;
7. Capability and commitment to expanding the Program by providing supply options for customers possessing accounts other than residential and small commercial retail accounts;
8. Capability to provide timely, accurate and useful customer account information to Members and Associate Members;
9. Capability to provide timely, accurate and useful Program information to Members and Associate Members through websites, call centers and other materials;
10. Capability to provide the City with requested remittances while minimizing increases in Fixed Prices for Members and Associate Members;
11. Capability to provide Members and Associate Members with additional energy efficiency, distributed generation, and demand response services.
12. General supply experience and capability;
13. Financial stability, as reflected by the long-term bond rating of the Proposer or the Proposer's parent company and various financial ratios;
14. Compliance with laws, ordinances, and statutes;
15. Absence of conflicts of interest;
16. The nature and extent of any legal actions pending against the Respondent; and
17. Acceptance of specific policies and requirements of the City including MBE/WBE participation, the City of Chicago Standard Terms and Conditions, and insurance coverage levels.

## **B. QUALIFICATION PROCESS**

In the sole discretion of the Evaluation Committee, Respondents may be invited to appear before the Evaluation Committee (1) for an oral presentation, (2) to clarify in more detail information that was submitted in the Respondent's Proposal, (3) and/or to ask Respondent to respond to additional questions. Afterwards, the Evaluation Committee will make a final determination whether to rate a Respondent as "Qualified." Only those Respondents evaluated "Qualified" will be invited to respond to forthcoming Bid Process for electricity supply.

## **SECTION 4 - CONFIDENTIALITY**

Respondent may designate those portions of their Qualification Submittals which contain trade secrets or other proprietary data that they wish to remain confidential. If a Respondent includes data that is not to be disclosed to the public for any purpose or used by the City except for evaluation purposes, the Respondent must:

- A. Mark the title page as follows: "This material includes trade secrets or other proprietary data ("Confidential or Proprietary Data") that may not be disclosed outside the City and may not be

duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this Proposal. The City, for purposes of this provision, will include any consultants assisting in the evaluation of Submittals. If, however, a contract is awarded to this Respondent as a result of or in connection with the submission of this Confidential or Proprietary Data, the City has the right to duplicate, use or disclose the Confidential or Proprietary Data as required by law or City policy. This restriction does not limit the City's right to use information contained in the Confidential or Proprietary Data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (insert page numbers or other identification)."

- B. Mark each sheet or data to be restricted with the following legend: "Use or disclosure of Confidential or Proprietary Data contained on this sheet is subject to the restriction on the title page of this Proposal."
- C. All submissions are subject to the Freedom of Information Act.

## **SECTION 5 – BID PROCESS**

### **A. BID PACKAGE**

After establishing and notifying a qualified pool of Respondents, a bid package will be issues to each Qualified Respondent. The bid package will include:

- Instructions;
- A Form of Bid;
- A final Agreement.

The Form of Bid and the Agreement must be signed by Respondent's officials (s) authorized to bind Respondent to the bid and the Agreement, with proof of authority provided. The taking of exceptions to, or failure to sign, these forms will subject your bid to disqualification. In signing and submitting these documents, the Respondent will certify that the submission of a Form of Bid and Agreement is Respondent's binding offer to enter into the Agreement with the City.

### **B. PRICE**

All Bid submittals must conform to the pricing structure outlined in the bid package. Respondents will be instructed to provide margin pricing for the delivery period that will be specified in the bid package. Margin pricing will be the \$/kWh fee added to the Full Commodity Price for full-requirements electricity supply to Program Members, and will represent the total compensation the Respondent will receive for providing the services identified in Section 2B of this RFQ.

## **SECTION 6 - SPECIFICATIONS**

### **A. ELECTRICITY AGGREGATION PORTFOLIO REQUIREMENTS**

Attachment 4 concerns the Historical Electricity Usage Data provided by ComEd to the City. An electronic version of the dataset can be requested by submitting a request by e-mail to:

[electricityaggregation@cityofchicago.org](mailto:electricityaggregation@cityofchicago.org)

The subject line of the email must refer to Request for Qualification for Electricity Aggregation Supply Services, Specification No. 112257 and the body of the email shall include the names, titles, email address and phone number of the individual or individuals to which the electronic version of the dataset should be sent.

**B. PLAN OF OPERATION AND GOVERNANCE**

Attached hereto, as Attachment 5, is the proposed Plan of Operation and Governance. Note, the Plan is in draft form and is subject to change. The Plan will not be final until it is approved by the Chicago City Council.

**C. AGREEMENT**

Attached hereto, as Attachment 6, is the draft Agreement. Respondents may submit recommendations, comments, and proposed changes to the draft Agreement and the Plan and other questions or comments by November 9, 2012. Upon review, the City may incorporate proposed changes and clarifications into the Agreement and/or Plan. Such changes will be reflected in an Agreement issued as part of an Addendum to this RFQ. A final version of the Agreement and Plan of Operation and Governance will accompany the Bid Process solicitation documents.

Qualification Submittals must contain Respondent's written affirmation that it will comply with all terms and conditions of the Agreement and Plan of Operation and Governance in order to be deemed "Qualified."

Qualified Respondents that submit a bid must also submit a signed Agreement along with such bid. The City will enter into a contract with the lowest responsive and responsible Bidder.



**ATTACHMENT 1**

**ONLINE CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS) AND APPENDIX A INSTRUCTIONS**

**AND**

**ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT**

**ONLINE CITY OF CHICAGO ECONOMIC DISCLOSURE  
STATEMENT AND AFFIDAVIT (EDS) INSTRUCTIONS**

WHEN SUBMITTING YOUR RESPONSE TO THIS REQUEST FOR QUALIFICATIONS FOR ELECTRICITY AGGREGATION SUPPLY (RFQ), SPECIFICATION NO. 11257, THE RESPONDENT SHALL SUBMIT 2 DOCUMENTS: 1) A “**CERTIFICATE OF FILING**” EVIDENCING COMPLETION OF YOUR ONLINE EDS AND 2) AN EXECUTED **ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT** SIGNED BY AN AUTHORIZED OFFICER BEFORE A NOTARY.

**1. ONLINE EDS FILING**

**1.1. ONLINE EDS FILING REQUIRED PRIOR TO RESPONSE DUE DATE**

The Respondent shall complete an online EDS prior to the response due date. A Respondent who does not file an electronic EDS prior to the response due date may be found non-responsive and its response rejected. If you are unable to complete the online EDS and print a Certificate of Filing prior to the response due date, the City will accept a paper EDS provided written justification is provided explaining your good faith efforts to complete it before the response due date and the reasons why it could not be completed.

**NOTE: ALWAYS SELECT THE “CONTRACT” (NOT UPDATE) BOX WHEN COMPLETING AN ONLINE EDS TO ENSURE A NEW CONTRACT SPECIFIC ONLINE EDS IS CREATED RELATED TO THE SOLICITATION DOCUMENT. CLICKING THE UPDATE BOX ONLY UPDATES PREVIOUS EDS INFORMATION.**

**1.2. ONLINE EDS WEB LINK**

The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

**1.3. ONLINE EDS NUMBER**

Upon completion of the online EDS submission process, the Respondent will be provided an EDS number. Respondent should record this number here:

EDS Number: \_\_\_\_\_

**1.4. ONLINE EDS CERTIFICATION OF FILING AND ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT**

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing and Attachment A, Online EDS Acknowledgement form with its response. Please insert your Certification of Filing and Attachment A, Online EDS Acknowledgement form following the Cover Letter. See Section 5.2, Item K, Required Contents of Proposal in the RFQ. A Respondent who does not include a signed Certificate of Filing and/or Attachment A, Online EDS Acknowledgement form with its response must provide it upon the request of the Chief Procurement Officer.

**1.5. PREPARATION CHECKLIST FOR REGISTRATION**

To expedite and ease your registration process, we recommend that you collect the following information prior to registering for an Online EDS user account:

	1. Invitation number, if you were provided an invitation number.
	2. EDS document from previous years, if available.

	3. Email address to correspond with the Online EDS system.
	4. Company Information:
	a. Legal Name
	b. FEIN/SSN
	c. City of Chicago Supplier Number, if available.
	d. Address and phone number information that you would like to appear on your EDS documents.
	e. EDS Captain. Check for an EDS Captain in your company - this maybe the person that usually submits EDS for your company, or the first person that registers for your company.

**1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION**

To expedite and ease your EDS submission, we recommend that you collect the following information prior to updating your EDS information online.

Items #1 through #7 are needed for both EDS information updates and contract related EDS documents:

- \_\_\_\_\_ 1. Invitation number, if you were provided with an invitation number.
- \_\_\_\_\_ 2. Site address that is specific to this EDS.
- \_\_\_\_\_ 3. Contact that is responsible for this EDS.
- \_\_\_\_\_ 4. EDS document from previous years, if available.
- \_\_\_\_\_ 5. Ownership structure, and if applicable, owners' company information:
  - \_\_\_\_\_ a. % of ownership
  - \_\_\_\_\_ b. Legal Name
  - \_\_\_\_\_ c. FEIN/SSN
  - \_\_\_\_\_ d. City of Chicago Supplier Number, if available.
  - \_\_\_\_\_ e. Address
- \_\_\_\_\_ 6. List of directors, officers, titleholders, etc. (if applicable).
- \_\_\_\_\_ 7. For partnerships/LLC/LLP/Joint ventures, etc.:
  - \_\_\_\_\_ a. List of controlling parties (if applicable).

Items #8 and #9 are needed ONLY for contract related EDS documents:

- \_\_\_\_\_ 8. Contract related information (if applicable):
  - \_\_\_\_\_ a. City of Chicago contract package
  - \_\_\_\_\_ b. Cover page of City of Chicago bid/solicitation package
  - \_\_\_\_\_ c. If EDS is related to a mod, then cover page of your current contract with the City.

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- 
- 
- 
9. List of subcontractors and retained parties:
    - a. Name
    - b. Address
    - c. Fees – Estimated or paid

**1.7. EDS FREQUENTLY ASKED QUESTIONS**

**Q: Where do I file?**

A: The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

**Q: How do I get help?**

A: If there is a question mark on a page or next to a field, click on the question mark for help filling out the page or field. You may also consult the User Manual and the Training Videos available on the left menu.

**Q: Why do I have to submit an EDS?**

A: The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council, City department or other City agency approval. For example, all bidders seeking a City contract are required to submit an EDS. Through the EDS, applicants make disclosures required by State law and City ordinances and certify compliance with various laws and ordinances. An EDS is also required of certain parties related to the applicant, such as owners and controlling parties.

**Q: Who is the Applicant?**

A: “Applicant” means any entity or person making an application to the City for action requiring City Council or other City agency approval. The applicant does not include owners and parent companies.

**Q: Who is the Disclosing Party?**

A: “Disclosing Party” means any entity or person submitting an EDS. This includes owners and parent companies.

**Q: What is an entity or legal entity?**

A: “Entity” or “Legal Entity” means a legal entity (for example, a corporation, partnership, joint venture, limited liability company or trust).

**Q: What is a person for purposes of the EDS?**

A: “Person” means a human being.

**Q: Who must submit an EDS?**

A. An EDS must be submitted in any of the following three circumstances:

<b>Applicants:</b>	An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.
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<b>Entities holding an interest:</b>	Whenever a legal entity has a beneficial interest (E. G. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.
<b>Controlling entities:</b>	Whenever a Disclosing Party is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture that has a general partner, managing member, manager or other entity that can control the day-to-day management of the Disclosing Party, that entity must also file an EDS on its own behalf. Each entity with a beneficial interest of more than 7.5% in the controlling entity must also file an EDS on its own behalf.

**Q: What information is needed to submit an EDS?**

A: The information contained in the Preparation Checklist for EDS submission.

**Q: I don't have a user ID & password. Can I still submit an Online EDS?**

A: No. You must register and create a user ID and password before submitting an Online EDS.

**Q: What information is needed to request a user ID & password for Online EDS?**

A: The information contained in the Preparation Checklist for Registration is needed to request a login for the Online EDS.

**Q: I already have a username and password from another City web site (City Web Portal, Department of Construction and Permits, Department of Consumer Services, etc.). Can I log-in the Online EDS with that account?**

A: Usually not. The Online EDS uses a user ID and password system that is shared by the Public Vehicle Advertising and Water Payment web sites. You may use a username and password from those sites by answering "Yes" to "Is this an existing City of Chicago user ID?" when registering. Other usernames and passwords will not be automatically recognized. However, you may choose to create an identical username for the Online EDS if it is not already taken.

**Q: I don't have an email address. How do I submit an Online EDS?**

A: You cannot get an account to submit an online EDS without an email address. If you need an e-mail address, we suggest that you use a free internet email provider such as [www.hotmail.com](http://www.hotmail.com) or [www.yahoo.com](http://www.yahoo.com) or [rmail.google.com](http://rmail.google.com) to open an account. The City does not endorse any particular free internet email provider. Public computers are available at all Chicago Public Library branches.

**Q: I forgot my user ID. Can I register again?**

A: No. If you are the EDS Captain of your organization, please contact the Department of Procurement Services at 312-744-4900. If you are an EDS team member, contact your EDS Captain, who can look up your user ID.

**Q: Who is the EDS Captain?**

A: The EDS Captain is a person who performs certain administrative functions for an organization which files an EDS. Each organization registered with the Online EDS has at least one EDS Captain.

There may be co-captains, who are all equal. EDS Captains approve new users, change contact information for an organization, and de-active accounts of employees who have left the organization. Please see the User Manual for more information.

**Q: Why do we need EDS Captains?**

A: The Online EDS is designed to be a self-service web application which allows those doing or seeking to do business with the City to perform as many routine functions as possible without City intervention. Because many organizations have multiple staff filing an EDS, the EDS Captain role allows those organizations to self-manage the contact information and users.

**Q: Who is the EDS team?**

A: The EDS team for an organization is everyone who is registered to file an EDS on behalf of the organization.

**Q: I forgot my password. What should I do?**

A: To retrieve a temporary password, click the “Forgot your password?” link on the login page. Enter your user ID that you provided when you registered your account. The system will automatically generate a temporary password and send it to you. When you log-in with your temporary password, you will be asked to create a new password.

**Q: How do I complete an Online EDS?**

A: Click on “Create New” after logging in. The Online EDS system will walk you through the EDS questions. Please see the User Manual for details.

**Q: How do I fill out a Disclosure of Retained Parties?**

A: There is no longer a separate Disclosure of Retained Parties filing. After logging in, click on “Create New”. Answer (click) “Contract” to “Is this EDS for a contract or an EDS information update?” Click “Fill out EDS”, and click on the “Retained Parties” tab. When finished, click on “Ready to Submit.”

**Q: How do I attach documents?**

A: Attachments are discouraged. If at all possible, please provide a concise explanation in the space provided in the online form. Attachments with pages of officers are not acceptable. Names of officers must be typed into the system. If you must provide an attachment for another reason, please send it to your City of Chicago contact (contract administrator or negotiator for procurements) and they will attach it for you. Documents can be sent in PDF (preferred), Word, or paper format.

**Q: Who can complete an Economic Disclosure Statement online?**

A: Any authorized representative of your business with a user ID and password can complete your EDS online. One person, such as an assistant, can fill in the information and save it, and another person can review and electronically sign the Online EDS.

**Q: What are the benefits of filing my Economic Disclosure statement electronically?**

A: Filing electronically reduces the chance of filing an incomplete EDS and speeds up the processing of contract awards. A certificate of filing can be printed at the completion of the process and inserted into your bid package. The biggest benefit for those who frequently do business with the City is that after the first EDS, each EDS is much easier to fill out because non-contract specific information is pre-filled from the last submitted EDS.

**Q: Will my information be secure?**

A: Yes. When making your internet connection to our Web Server, you will connect through a Secure Socket Layer (SSL for short) to the “Online EDS” login page. All information you type will be protected using strong encryption. Within the login page, you will provide us with a user ID, password, and secret question for user authentication. Only you will have knowledge of this unique identification information.

**Q: I am filing electronically. How do I sign my EDS?**

A: Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

**Q: My address has changed. How can I update my information?**

A: You must be an EDS Captain for your organization to update this. Log-in and click on “Supplier Admin, Site Administration.” Select the appropriate site and click edit.

**Q: I have more questions. How can I contact the Department of Procurement Services?**

A: Please contact the contract administrator or negotiator assigned to your solicitation or contract. You may call DPS at 312-744-4900 between 8:30 AM and 5:00 PM Central Time.

**Q: Can I save a partially complete EDS?**

A: Yes. Click “Save”. To avoid data loss, we recommend you save your work periodically while filling out your EDS.

**Q: Do I have to re-type my information each time I submit an EDS?**

A: No. The system will remember non-contract specific information from your last submitted EDS for one year. This information will be filled-in for you in your new EDS. You will have an opportunity to correct it if it has changed since your last filing. When you submit your new EDS, the information is saved and the one-year clock begins running anew.

**Q: What are the system requirements to use the Online EDS?**

A: The following are minimum requirements to use the Online EDS:

- A PDF viewer such as Adobe Reader is installed and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at [www.adobe.com/products/reader/](http://www.adobe.com/products/reader/)
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.
- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old

computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

The Online EDS has been tested on Internet Explorer 6.0 and 7.0 and Firefox 2.0 and 3.0 on Windows XP and Mac OS X. Although it should work on other browsers and operating systems, the City of Chicago cannot guarantee compatibility.



**ATTACHMENT A**

**ONLINE EDS ACKNOWLEDGEMENT**

The undersigned, hereby acknowledges having received Specification No. 112257 containing a full set of RFQ Documents, including, Addenda Numbers (none unless indicated here) \_\_\_\_\_, and affirms that the Respondent shall be bound by all the terms and conditions contained in the RFQ Documents, regardless of whether a complete set thereof is attached to this response.

Under penalty of perjury, the undersigned: (1) warrants that he/she was authorized to submit an EDS on behalf of the Disclosing Party on-line, (2) warrants that all certifications and statements contained in the EDS are true, accurate and complete as of the date the EDS was submitted on-line, and (3) further warrants that, as of the date of submission of this response, there have been no changes in circumstances since the date that the EDS was submitted that would render any certification in the EDS false, inaccurate or incomplete.

Further, the undersigned being duly sworn deposes and says on oath that no disclosures of ownership interests have been withheld and the information provided therein to the best of its knowledge is current and the undersigned has not entered into any agreement with any other respondent or prospective respondent or with any other person, firm or corporation relating to the price named in this proposal or any other proposal, nor any agreement or arrangement under which any act or omission in restraining of free competition among respondents and has not disclosed to any person, firm or corporation the terms of this proposal or the price named herein.

COMPANY NAME: \_\_\_\_\_  
(Print or Type)

AUTHORIZED OFFICER SIGNATURE: \_\_\_\_\_

TITLE OF SIGNATORY: \_\_\_\_\_  
(Print or Type)

BUSINESS ADDRESS: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_ (Affix Corporate Seal)

County of \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

\_\_\_\_\_ as President (or other authorized officer) and

\_\_\_\_\_ as Secretary of \_\_\_\_\_ (Company Name)

Notary Public Signature: \_\_\_\_\_(Seal)

**ATTACHMENT 2**

**INSURANCE REQUIREMENTS**

## ATTACHMENT 2

### INSURANCE REQUIREMENTS

#### Department of Fleet and Facility Management

#### Electricity Aggregation Supply Services Program

The Supplier must provide and maintain at Supplier's own expense, during the term of the Agreement and any time period following expiration if Supplier is required to perform any additional work, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

#### A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3) Subcontractors performing work for the Supplier must maintain limits of not less than \$1,000,000 with the same terms herein.

4) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Supplier must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis. Coverage

5) Professional Liability

When any program managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

Subcontractors performing professional Services for the Supplier must maintain limits of not less than \$1,000,000 with the same terms herein.

6) Valuable Papers

When any data, media, records, reports, files, billings, audits, financial statements, and other documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) Blanket Crime (if applicable)

The Supplier must provide Blanket Crime coverage covering all persons handling funds under this Agreement, against loss by dishonesty, robbery, burglary, theft, destruction, or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit must be written to cover losses in the amount of maximum monies collected, received and in the possession of Supplier at any given time as it regards this Agreement.

**B. ADDITIONAL REQUIREMENTS**

The Supplier must furnish the City of Chicago, Department of Fleet and Facility Management, Chicago, IL 60642, Attn: Janel Forde, Deputy Commissioner, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Supplier must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Supplier is not a waiver by the City of any requirements for the Supplier to obtain and maintain the specified coverages. The Contractor must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Supplier must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Supplier.

The Supplier hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Supplier in no way limit the Supplier's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Supplier under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Supplier is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Supplier must require all subcontractors to provide the insurance required herein, or Supplier may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Supplier unless otherwise specified in this Agreement.

If Supplier or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

**ATTACHMENT 3**

**SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND  
WOMEN BUSINESS ENTERPRISE COMMITMENT FOR MBE/WBE PROFESSIONAL SERVICES  
MBE/WBE SPECIAL CONDITIONS**

**SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR MBE/WBE PROFESSIONAL SERVICES**

**I. POLICY AND TERMS**

It is the policy of the City of Chicago that Local Businesses certified as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code shall have full and fair opportunities to participate fully in the performance of this agreement. Therefore, the contractor shall not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income, and shall take affirmative action to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

**Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.**

Accordingly, the Contractor commits to make Good Faith Efforts to expend at least the following percentages of the annual dollar value of non-commodity related revenues (inclusive of any and all modifications and amendment):

MBE Contract Goal: 25%  
WBE Contract Goal: 5%

The commitment is met by the contractor's status as an MBE or WBE, or by a joint venture with one or more certified MBEs or WBEs that will perform work on the project, or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the contractor's business (but no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all government contracts of such contractor), or by any combination of the foregoing.

**Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE, but not both to demonstrate compliance with the contract goals.**

As noted above, the contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this contract. However, in determining the manner of MBE/WBE participation, the contractor shall first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract. In appropriate cases, the Chief Procurement Officer will require the contractor to demonstrate the specific efforts undertaken to involve MBEs and WBEs in direct participation in the performance of this contract.

The contractor also may with prior approval of the Chief Procurement Officer or designee, meet all, or part, of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector projects.

## II. DEFINITIONS

- a. "Area of Specialty" means the description of a MBEs or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory (defined below). Credit towards this Contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

**NOTICE:** The City of Chicago does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.

- b. "B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.
- c. "Bid" means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting Agreement) that issued by the City.
- d. "Bidder" means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.
- e. "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.
- f. "Chief Procurement Officer" or "CPO" means the Chief Procurement Officer of the City of Chicago or his or her designee.
- g. "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.
- h. "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.
- i. "Contractor" means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.
- j. "Direct Participation" the total value of payments made to MBE or WBE firms for work that is



completed in their Area of Specialty directly related to the performance of the subject matter of the Contract will count as Direct Participation toward the Contract Specific Goals.

- k. "Directory" means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.
- l. "Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.
- m. "Indirect Participation" refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)
- n. "Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- o. "Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.
- p. "Municipal Code of Chicago" or "MCC" means the Municipal Code of the City of Chicago.
- q. "Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase, and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- r. "Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet the contract's MBE/WBE participation goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the contract's MBE/WBE participation goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the contract's MBE/WBE participation goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the contract's MBE/WBE participation goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the contract's MBE/WBE participation goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its proposal a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be

performed by employees of the newly formed joint venture entity;

3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**Notice:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

**Notice:** The City requires that, whenever a joint venture is proposed as the prime Contractor, each joint venture partner must separately sign the proposal to the City, in the pages captioned TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.

#### **IV. COUNTING MBE/WBE PARTICIPATION TOWARD THE CONTRACT GOALS**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. **Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.
  1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate). **0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals**
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals; or
  2. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  3. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.
- H. If the MBE or WBE subcontracts out any of its work:
1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by C.1. above).
  3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

## **V. REGULATIONS GOVERNING REDUCTIONS TO OR WAIVER OF MBE/WBE GOALS**

The following Regulations set forth the standards to be used in determining whether or not a reduction or waivers of the MBE/WBE commitment goals of a particular contract are appropriate. If a bidder determines that it is unable to meet the MBE and/or WBE goal percentage on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

All bidders will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

- 1) Bidders responding to Request for Proposals (RFPs) who have been identified as a sort listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- 2) Bidders responding to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations.

Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his or her discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

#### **A. Direct/Indirect Participation**

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

1. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal.. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Name, address, email and telephone number of MBE/WBE firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, email, etc.).
  - c. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;

- iii. Date, item, and location for acceptance of subcontractor bids;
- iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why negotiations were not successful;
- v. Affirmation that Good Faith Efforts have been demonstrated by: choosing subcontracting opportunities likely to achieve MBE/WBE goals; not imposing any limiting conditions which were not mandatory for all subcontractors; providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date.

**OR**

2. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:
  - a. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
  - b. A listing of all potential subcontractors contacted for a quotation on that work item;
  - c. Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
3. Other documentation that demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
  - a. The City's estimate for the work under a specific subcontract;
  - b. The bidder's own estimate for the work under the subcontract;
  - c. An average of the bona fide prices quoted for the subcontract;
  - d. Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

**B. Assist Agency Participation**

Every waiver and/or reduction request must include evidence that the bidder/contractor has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community shown in Attachment A. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder contacts at least one of the associations on Attachment A when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

**C. Impracticability**

1. If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.
2. The requirements set forth in these Regulations shall not apply where the Chief Procurement

Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices, or standards not previously known by the Chief Procurement Officer, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

## **VI. PROCEDURE TO DETERMINE BID COMPLIANCE**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its Good Faith Efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract: 1) An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals; and/or 2) a request for reduction or waiver of the Contract Specific Goals in accordance with Section 2-92-450 of the MCC.

**Only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.**

The following Schedules and described documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

### **A. Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier, and/or Consultant**

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor, and second or lower tier subcontractors must submit a Schedule C-1 for second tier Subcontractors. Each Schedule C-1 must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C-1 must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five (5) business days after the date of the bid opening.

Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

### **B. Letters of Certification.**

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago, or from such other certifying body as may be acceptable to the Chief Procurement Officer, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago, or from such other certifying body as may be acceptable to the Chief Procurement Officer, include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty.

### **C. Joint Venture Agreements.**

If the bidder's MBE/WBE proposal includes the participation of an MBE/WBE as joint venture on any tier (either as the bidder/contractor or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in Section III above. In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority)

#### **D. Schedule D-1: Affidavit of MBE/WBE Goal Implementation Plan**

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section V herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening, the bidder may submit a revised Schedule D-1 (executed and notarized to conform with the Schedules C-1). Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

All commitments for joint venture agreements must be delineated in the Schedule B.

### **VII. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT**

- A. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- C. Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be



completed by the 25th of each month or payments may be withheld.

- D. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>

- E. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- F. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

#### **VIII. CHANGES TO COMPLIANCE PLAN**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Contract Compliance Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing, or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal;
  8. Subcontractor provided false information; or
  9. De-certification the subcontractor as a MBE or WBE (graduation from the MBE/WBE program does not constitute de-certification).
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section V. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **IX. NON-COMPLIANCE AND DAMAGES**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts to comply with MBE or WBE participation requirements; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-445, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the MBE/WBE participation commitment and the achieved amount of MBE/WBE participation, disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-445 of the Municipal Code of the City of Chicago, within 15 business days of the determination.

#### **X. Arbitration**

- A. In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide

that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.

- B. An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitative process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
- C. All arbitration fees are to be paid *pro rata* by the parties, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing MBE/WBE.
- D. The MBE/WBE must send the City a copy of the Demand for Arbitration within ten (10) calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

## **XI Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

## ATTACHMENT A – ASSIST AGENCY

### **Alliance of Business Leaders & Entrepreneurs (ABLE)**

150 N. Michigan Ave. Suite 2800  
Chicago, IL 60601  
Phone: (312) 624-7733  
Fax: (312) 624-7734  
Web: [www.ablechicago.com](http://www.ablechicago.com)

### **Alliance of Minority and Female Contractors c/o Federation of Women Contractors**

5650 S. Archer Avenue  
Chicago, IL 60638  
Phone: (312) 360-1122  
Fax: (312) 360-0239

### **American Brotherhood of Contractors Business Development Center**

11509 S. Elizabeth  
Chicago, IL 60643  
Phone: (773) 928-2225  
Fax: (773) 928-2209  
Web: [www.american-brotherhood.org](http://www.american-brotherhood.org)

### **Asian American Institute**

4753 N. Broadway St. Suite 904  
Chicago, IL 60640  
Phone: (773) 271-0899  
Fax: (773) 271-1982  
Web: [www.aaichicago.org](http://www.aaichicago.org)

### **Association of Asian Construction Enterprises**

333 N. Ogden Avenue  
Chicago, IL 60607  
Phone: (847) 525-9693  
Email: [nakmancorp@aol.com](mailto:nakmancorp@aol.com)

### **Black Contractors United**

400 W. 76th Street, Suite 200  
Chicago, IL 60620  
Phone: (773) 483-4000  
Fax: (773) 483-4150  
Web: [www.blackcontractorsunited.com](http://www.blackcontractorsunited.com)

### **Chatham Business Association Small Business Development, Inc.**

8441 S. Cottage Grove Avenue  
Chicago, IL 60619  
Phone: (773) 994-5006  
Fax: (773) 994-9871  
Web: [www.cbaworks.org](http://www.cbaworks.org)

### **Chicago Area Gay & Lesbian Chamber of Commerce**

3656 N. Halsted  
Chicago, IL 60613  
Phone: (773) 303-0167  
Fax: (773) 303-0168  
Web: [www.glchamber.org](http://www.glchamber.org)

### **Chicago Minority Supplier Development Council, Inc.**

105 W. Adams, Suite 2300  
Chicago, IL 60603-6233  
Phone: (312) 755-8880  
Fax: (312) 755-8890  
Web: [www.chicagomsdc.org](http://www.chicagomsdc.org)

### **Chicago Urban League**

4510 S. Michigan Ave.  
Chicago, IL 60653  
Phone: (773) 285-5800  
Fax: (773) 285-7772  
Web: [www.cul-chicago.org](http://www.cul-chicago.org)

### **Cosmopolitan Chamber of Commerce**

203 N. Wabash, Suite 518  
Chicago, IL 60601  
Phone: (312) 499-0611  
Fax: (312) 332-2688  
Web: [www.cosmochamber.org](http://www.cosmochamber.org)

### **Federation of Women Contractors**

5650 S. Archer Avenue  
Chicago, IL 60638  
Phone: (312) 360-1122  
Fax: (312) 360-0239  
Web: [www.fwcchicago.com](http://www.fwcchicago.com)

### **Hispanic American Construction Industry Association (HACIA)**

901 West Jackson Boulevard, Suite 205  
Chicago, IL 60607  
Phone: (312) 666-5910  
Fax: (312) 666-5692  
Web: [www.haciaworks.org](http://www.haciaworks.org)

### **Illinois Hispanic Chamber of Commerce**

855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone: (312) 425-9500  
Fax: (312) 425-9510  
Web: [www.ihccbbusiness.net](http://www.ihccbbusiness.net)

**Latin American Chamber of Commerce**  
3512 West Fullerton Avenue  
Chicago, IL 60647  
Phone: (773) 252-5211  
Fax: (773) 252-7065  
Web:  
[www.latinamericanchamberofcommerce.com](http://www.latinamericanchamberofcommerce.com)

**National Association of Women Business Owners**  
Chicago Chapter  
230 E. Ohio, Suite 400  
Chicago, IL 60611  
Phone: (312) 224-2605  
Fax: (312) 6448557  
Web: [www.nawbochicago.org](http://www.nawbochicago.org)

**Rainbow/PUSH Coalition**  
International Trade Bureau  
930 E. 50th Street  
Chicago, IL 60615  
Phone: (773) 256-2781  
Fax: (773) 373-4104  
Web: [www.rainbowpush.org](http://www.rainbowpush.org)

**Suburban Minority Contractors Association**  
1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: (847) 852-5010  
Fax: (847) 382-1787  
Web: [www.suburbanblackcontractors.org](http://www.suburbanblackcontractors.org)

**Uptown Center Hull House**  
4520 N. Beacon Street  
Chicago, IL 60640  
Phone: (773) 561-3500  
Fax: (773) 561-3507  
Web: [www.hullhouse.org](http://www.hullhouse.org)

**Women Construction Owners & Executives (WCOE)**  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Web: [www.wcoeusa.org](http://www.wcoeusa.org)

**Women's Business Development Center**  
8 South Michigan Ave., Suite 400  
Chicago, IL 60603

Phone: (312) 853-3477  
Fax: (312) 853-0145  
Web: [www.wbdc.org](http://www.wbdc.org)

**Chicago Women in Trades (CWIT)**  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone: (773) 376-1450  
Fax: (312) 942-0802  
Web: [www.chicagowomenintrades.org](http://www.chicagowomenintrades.org)

**Coalition for United Community Labor Force**  
1253 W. 63rd Street  
Chicago, IL 60636  
Phone: (312) 243-5149

**Illinois Black Chamber of Commerce**  
331 Fulton Street, Suite 530  
Peoria, IL 61602  
Phone: (309) 740-4430  
Fax: (309) 672-1379  
[www.ilbcc.org](http://www.ilbcc.org)

**Englewood Black Chamber of Commerce**  
P.O. Box 21453  
Chicago, IL 60621

**South Shore Chamber, Incorporated**  
Black United Funds Bldg.  
1750 E. 71st Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508

**United Neighborhood Organization (UNO)**  
954 W. Washington Blvd., 3rd Floor  
Chicago, IL 60607  
Phone: (312) 432-6301  
Fax: (312) 432-0077  
Web: [www.uno-online.org](http://www.uno-online.org)

**National Organization of Minority Engineers**  
33 West Monroe Suite 1540  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Web: [www.nomeonline.org](http://www.nomeonline.org)

Jan 2012

**ATTACHMENT B**  
**(On Bidder/proposer=s Letterhead)**

**RETURN RECEIPT REQUESTED**

(Date)

Re: Specification \_\_\_\_\_

Description: \_\_\_\_\_

(Assist Agency Name and Address)

Dear \_\_\_\_\_:

(Bidder/Proposer) \_\_\_\_\_ intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due \_\_\_\_\_ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/Minority/Women Business Enterprise contract goal. **Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted.** If you are aware of such a firm, please contact

\_\_\_\_\_ at \_\_\_\_\_  
Name of Company Representative  
Address/phone

within (10) ten working days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within fifteen (15) working days of your receipt of this letter to:

Monica Jimenez, Deputy Procurement Officer  
Department of Procurement Services  
City of Chicago  
121 North La Salle Street, Room 403  
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

**SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)**

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

All Information Requested by this Schedule must Be Answered in the Spaces Provided. Do Not Refer to Your Joint Venture Agreement Except to Expand on Answers Provided on this Form. If Additional Space Is Required, Additional Sheets May Be Attached.

I. Name of joint venture: \_\_\_\_\_  
Address of joint venture: \_\_\_\_\_  
\_\_\_\_\_  
Phone number of joint venture: \_\_\_\_\_

II. Identify each non-MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

III. Identify each MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.  
A. What are the percentage(s) of MBE/WBE ownership of the joint venture?  
    MBE/WBE ownership percentage(s) \_\_\_\_\_  
    Non-MBE/WBE ownership percentage(s) \_\_\_\_\_

B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):

1. Profit and loss sharing: \_\_\_\_\_
2. Capital contributions:  
(a) Dollar amounts of initial contribution: \_\_\_\_\_  
\_\_\_\_\_

(b) Dollar amounts of anticipated on-going contributions: \_\_\_\_\_

3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5. Provide copies of all written agreements between venturers concerning this project.

6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Authority to enter contracts on behalf of the joint venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Signing, co-signing and/or collateralizing loans:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Acquisition of lines of credit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. Acquisition and indemnification of payment and performance bonds:

\_\_\_\_\_



**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

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F. Negotiating and signing labor agreements:

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G. Management of contract performance. (Identify by name and firm only):

- 1. Supervision of field operations: \_\_\_\_\_
- 2. Major purchases: \_\_\_\_\_
- 3. Estimating: \_\_\_\_\_
- 4. Engineering: \_\_\_\_\_

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

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B. Identify the managing partner, if any, and describe the means and measure of their compensation:

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C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

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IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

Trade	Non-MBE/WBE Firm (Number)	MBE/WBE (Number)	Joint Venture (Number)

If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venturer?  
 Currently employed by non-MBE/WBE (number) \_\_\_\_\_ Employed by MBE/WBE \_\_\_\_\_

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

\_\_\_\_\_

C. Which venturer will be responsible for the preparation of joint venture payrolls:

\_\_\_\_\_

X. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

\_\_\_\_\_  
Name of MBE/WBE Partner Firm

\_\_\_\_\_  
Name of Non-MBE/WBE Partner Firm

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Name and Title of Affiant

\_\_\_\_\_  
Name and Title of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-signed officers

\_\_\_\_\_  
(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

**SCHEDULE C-1**  
**Letter of Intent from MBE/WBE to Perform**  
**as Subcontractor, Supplier and/or Consultant**

Name of Project/Contract: \_\_\_\_\_  
 Specification Number: \_\_\_\_\_

From: \_\_\_\_\_  
 (Name of MBE/WBE Firm)

MBE: Yes \_\_\_\_\_ No \_\_\_\_\_  
 WBE: Yes \_\_\_\_\_ No \_\_\_\_\_

To: \_\_\_\_\_ and the City of Chicago:  
 (Name of Prime Contractor - Bidder/Proposer)

The undersigned intends to perform work in connection with the above projects as a:

\_\_\_\_\_ Sole Proprietor                      \_\_\_\_\_ Corporation  
 \_\_\_\_\_ Partnership                      \_\_\_\_\_ Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached letter of Certification from the City of Chicago effective date of \_\_\_\_\_ to \_\_\_\_\_ for a period of five years.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The above described performance is offered for the following price and described terms of payment:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheets.

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, and will do so within (3) three working days of receipt of a signed contract from the City of Chicago.

\_\_\_\_\_  
 (Signature of Owner or Authorized Agent)

\_\_\_\_\_  
 Name /Title (Print)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Phone

# SCHEDULE D-1

## Affidavit of MBE/WBE Goal Implementation Plan

Project Name: \_\_\_\_\_

State of \_\_\_\_\_

County (City) of \_\_\_\_\_

I HEREBY DECLARE AND AFFIRM that I am duly authorized representative of:

\_\_\_\_\_  
Name of Prime Consultant/Contractor

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the MBE/WBE goals of this contract.

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago (Letters of Certification Attached).

- I. MBE or WBE Prime Consultant/Contractor. If prime consultant is a certified MBE or WBE firm, attach copy of City of Chicago Letter of Certification. (Certification of the prime consultant as a MBE satisfies the MBE goal only. Certification of the prime consultant as a WBE satisfies the WBE goal only.)
- II. MBEs and WBEs as Joint Venturers. If prime consultant is a joint venture and one or more joint venture partners are certified MBEs or WBEs, attach copies of Letters of Certification and a copy of Joint Venture Agreement clearly describing the role of the MBE/WBE firm(s) and its ownership interest in the joint venture.
- III. MBE/WBE Sub consultants. Complete for each MBE/WBE sub consultant/subcontractor/supplier.

1. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

2. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

3. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

4. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

5. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

6. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

7. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount of Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_%

8. Attach additional sheets as needed.

IV. Summary of MBE Proposal:

MBE Firm Name	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
Total MBE Participation:	\$ _____	_____ %

V. Summary of WBE Proposal:

WBE Firm Name	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
Total WBE Participation:	\$ _____	_____ %

To the best of my knowledge, information and belief, the facts and representations contained in this Schedule are true, and no material facts have been omitted.

The contractor designates the following person as their MBE/WBE Liaison Officer:

Name \_\_\_\_\_ Phone Number: \_\_\_\_\_

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

\_\_\_\_\_  
Signature of Affiant (Date)

State of \_\_\_\_\_  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name /s of person/s)  
as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)  
of \_\_\_\_\_ (name of party on behalf of whom instrument  
was executed).

(Seal)

\_\_\_\_\_  
Signature of Notary Public

# MBE/WBE UTILIZATION REPORT

Utilization Report No. \_\_\_\_\_ Specification No. \_\_\_\_\_

Contract No. \_\_\_\_\_

Project Name: \_\_\_\_\_

STATE OF: \_\_\_\_\_)

COUNTY (CITY) OF: \_\_\_\_\_)

In connection with the above-captioned contract:

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title - Print or Type)

and duly authorized representative of \_\_\_\_\_  
(Name of Prime Consultant /Contractor - Print or Type)

\_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
(Address of Prime Consultant/Contractor) (Phone)

*and that the following Minority and Women Business Enterprises have been contracted with, and have furnished, or are furnishing and preparing materials for, and rendering services stated in the contract agreement.*

*The following Schedule accurately reflects the value of each MBE/WBE sub-agreement and the amounts of money paid to each to date.*

MBE/WBE FIRM NAME	GOODS/SERVICES PROVIDED	AMOUNT OF CONTRACT	AMOUNT PAID TO-DATE
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Total MBE: \$ \_\_\_\_\_

Total WBE: \$ \_\_\_\_\_



*I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.*

Name of Contractor: \_\_\_\_\_  
(Print or Type)

Signature: \_\_\_\_\_  
(Signature of affiant)

Name of Affiant: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_

County (City) of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)

by \_\_\_\_\_ (name/s of person/s)

as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)

of \_\_\_\_\_ (name of party on behalf of whom instrument was executed).

\_\_\_\_\_  
Signature of Notary Public

(Seal)

## **ATTACHMENT 4**

### **HISTORICAL ELECTRICITY**

### **USAGE INFORMATION**

Upon request, aggregate historical electricity usage information for the City's residential and small commercial retail customers will be provided in a Microsoft Excel file. Please send an e-mail to [electricityaggregation@cityofchicago.org](mailto:electricityaggregation@cityofchicago.org) if you wish to receive this information.

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**ATTACHMENT 5**

**PLAN OF GOVERNANCE AND OPERATION**

**[SEE ATTACHED]**

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# City of Chicago Electricity Aggregation Program: Plan of Operation & Governance

October \_\_, 2012



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## I. HISTORY AND PURPOSE OF ELECTRICITY AGGREGATION

The Illinois Electric Service Customer Choice and Rate Relief Law of 1997 allows consumers served by Commonwealth Edison Company (ComEd) and Ameren Illinois Utilities to purchase electricity supply from certified alternative retail electric suppliers (ARES). When consumers purchase electricity from an ARES, ComEd remains responsible for distributing electricity to them, and is also responsible for maintaining system reliability and safety, and facilitating monthly billing in a non-biased and cost-neutral manner.

Industrial and commercial consumers largely adopted the use of the ARES supply option by 2007 while residential consumers did not. As of December 2009, only 185 of the 3.45 million ComEd residential customers were exercising their right to purchase electricity supply from competitive ARES providers. Lack of participation was due to transactional barriers and general unfamiliarity with the methods and potential benefits of the deregulated marketplace.

Public Act 96-0176<sup>1</sup> became effective on January 1, 2010, and sought to remove barriers and reduce consumer risk by allowing local municipalities to serve as intermediaries on behalf of residential and small commercial consumers located within their municipal borders. This authority is termed “electricity aggregation.”

Electricity aggregation allows local municipalities to negotiate electricity supply and service agreements on behalf of the residential and small commercial retail consumers located within their corporate borders. Several other states have passed similar electricity aggregation legislation, including California, Massachusetts, New Jersey, Ohio, and Rhode Island. To date, over 200 Illinois communities have established electricity aggregation programs to assist their residents with electricity purchasing. Due largely to certain long-term contracts entered into by the Illinois Power Agency in 2007, these municipalities have been able to secure electricity prices lower than those offered by ComEd on behalf of their residents. These municipalities have also been able to contract for better and more consistent consumer protections, and reserve the option to secure special services and supply options that meet the needs and policy objectives of the local community.

Pursuant to Section 1-92 of the Act, the City of Chicago (City) is authorized to aggregate the electric loads of small commercial retail and residential electricity consumers located within its municipal boundaries. As part of the electricity aggregation, the City may select a retail electric supplier (or suppliers) and may enter into a service agreement (or agreements) to provide for the purchase of electricity and related services and equipment on behalf of its small commercial retail and residential electricity consumers.

In accordance with the Act, on June 27, 2012, the City Council approved Resolution No. R2012-470, authorizing the placement of a referendum on the November 6, 2012 ballot asking whether the City should be able to establish an opt-out electricity aggregation program for its residential and small commercial retail consumers. Assuming voters approve the referendum,

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<sup>1</sup> Public Act 96-0176 was codified as section 1-92 of the Illinois Power Agency Act (the Act).

the record of the authorizing votes for the referendum will be included as Attachment A to this Plan of Operation and Governance.

Prior to the passage of the referendum, the City retained the services of a consultant to assist with planning and implementing the City's electricity aggregation program (Program). The consultant's scope of work includes: assisting the City in preparing the request for qualifications (RFQ) and the bid request from qualified RFQ respondents; advising the City regarding the selection of the retail electricity supplier (or suppliers); and advising the City on public outreach and education related to electricity aggregation.

The Program will conduct the due diligence, contract negotiation, and competitive bidding to obtain the lowest prices for electricity that individual consumers are unlikely to be able to achieve on their own. As the region's largest municipality, the City anticipates favorable results with regards to lower price, favorable terms, and the highest levels of customer service.

The City will not resell power through the Program. Rather, the City will competitively bid and negotiate a Power Supply Agreement with one or more qualified and certified ARES (or ARESs) on behalf of Program participants. As part of its obligations under the Power Supply Agreement, the ARES (or ARESs) will provide electricity supply to residential and small commercial retail accounts enrolled in the Program at rates negotiated by the City. Also, the ARES (or ARESs) will assist the City in notifying residential and small business consumers about the Program, and facilitating the enrollment of individual electricity accounts into the Program. The ARES (or ARESs) will also provide ancillary services for Program participants as described in this Plan. The Program will operate on an opt-out basis, whereby all eligible residential and small commercial retail customers of ComEd located within the City will be automatically enrolled in the Program unless they affirmatively elect to opt out of the Program. The Program will establish procedures by which parties may opt out of the Program to ensure that participation is voluntary, and consumers have the ability to decline to participate without penalty or fees.

By operating on an opt out basis, the City can present a larger and more stable portfolio to potential bidders. As a result, the City hopes to receive more competitive and favorable offers from interested ARES.

As required by law, this Plan of Operation and Governance describes the City's plan for:

- 1) Providing universal access to all eligible residential and small commercial retail customers and equitable treatment of applicable residential and small commercial retail customers;
- 2) Providing demand management and energy efficiency services to each class of customers; and,
- 3) Meeting any other legal requirements concerning aggregated electric service.

The City conducted a public outreach campaign to educate consumers about the Program, and to gather input regarding their preferences for the development of this Plan of Operation and Governance. Outreach efforts included public meetings, two statutorily-required public hearings, press releases, and discussions with organizations and residents with a background in energy matters.

The City, the Consultant, and the selected ARES (or ARESs) will follow the Plan of Operation and Governance set forth in this document. Amendments to this Plan of Operation and Governance may be adopted in accordance with the Act at the option of the City. Any such amendments will be submitted to the City Council for review and approval.

## **II. DEFINITIONS**

The following terms shall have the meanings set forth below:

**“Act”** shall refer to the Illinois Power Agency Act, 20 ILCS 3855/1-1 *et seq.*

**“Aggregation”** shall mean the pooling of residential and small commercial retail electrical loads located within the City for the purpose of soliciting bids and entering into service agreements to facilitate for those loads the sale and purchase of electricity and related services, all in accordance with Section 1-92 of the Act.

**“ARES”** has the same meaning as that set forth in section 16-102 of the Public Utilities Act. 220 ILCS 5/16-102.

**“Associate Member”** shall mean a commercial retail electric account that is not an Eligible Retail Customer that elects to enter into a supply agreement with an ARES (or ARESs) serving as a supplier (or suppliers) to the City’s Electricity Aggregation Program. An example of an Associate member is an account receiving service from ComEd under the Small Business tariff that consumes more than 15,000 kWh in a year.

**“Ancillary Services”** shall mean the necessary services that must be provided in the generation and delivery of electricity. As defined by the Federal Energy Regulatory Commission, Ancillary Services include: coordination and scheduling services (load following, energy imbalance service, control of transmission congestion); automatic generation control (load frequency control and the economic dispatch of plants); contractual agreements (loss compensation service); and support of system integrity and security (reactive power, or spinning and operating reserves).<sup>2</sup>

**“Bid”** shall mean the submission a Qualified Bidder makes in response to the City’s Bid Request.

**“Bidder”** shall mean a respondent to the City’s Bid Request.

**Bid Request** shall mean a request to Qualified Bidders to provide pricing proposals.

**“City”** shall mean the City of Chicago.

**“ComEd”** shall mean the Commonwealth Edison Company

**“Consultant”** shall refer to any independent consultant with demonstrated expertise in electric supply contracting who is retained by the City to assist with the Program.

**“Default Tariff Service”** shall mean the electricity supply services available to Eligible Retail Customers by ComEd.

**“Delivery Point”** shall mean Commonwealth Edison.

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<sup>2</sup> This is the definition used by the Federal Energy Regulatory Commission.



**“Electricity Supply”** shall mean the electricity commodity plus necessary capacity, transmission, distribution, and ancillary services provided to Program Members and Associate Members.

**“Electricity Supply Bid”** shall mean the bid process pursuant to which the City solicits pricing for transactions during the term of the Agreement.

**“Electricity Supply Price”** shall mean the unit price (\$/kWh) offered to Members through the Program.

**“Eligible Retail Customer”** shall mean the residential and small commercial retail customers of ComEd located within the City limits and eligible to participate in the Program as defined in section 1-92 of the Act (20 ILCS 3855/1-92).

**“Energy Efficiency Services”** shall mean those services that would allow Members and Associate Members to more efficiently utilize electricity.

**“Energy Efficiency Services Agreement”** shall mean the contract between the City and an Energy Efficiency Services Provider.

**“Energy Efficiency Services Provider”** shall mean an entity that provides Energy Efficiency Services to Program Members and Associate Members through an Energy Services Agreement with the City.

**“Fixed Price”** shall mean a non-variable and guaranteed Full Commodity Price for a specified period. This price includes all costs associated with delivering electricity to the Delivery Point and ComEd’s Utility Consolidated Billing and Purchase of Receivables services.

**“Full Commodity Price”** shall mean the all-inclusive costs associated with delivering electricity to the Delivery Point plus costs associated with ComEd’s Utility Consolidated Billing and Purchase of Receivables services. Such costs include, but are not limited to: tariff charges, rates and rate adjustments, transmission costs (including reliability must-run costs), capacity charges, ancillary service costs and credits, hedging and risk management fees, losses, and all other surcharges, taxes, custom duties/charges and balancing costs, and compliance with the State of Illinois Renewable Portfolio Standard.

**“Full Electricity Requirements”** shall mean a sale of electricity supplies and services by the supplier in which the seller pledges to meet all of the each Member’s requirements, and the Members pledge to buy all of their electricity requirements from the supplier, for the delivery period identified in the RFQ.

**“ICC”** shall mean the Illinois Commerce Commission.

**“IPA”** shall mean the Illinois Power Agency.

**“kWh”** shall mean a kilowatt-hour.

**“Load”** shall mean the electric energy in kWhs required to serve the Members and Associate Members of the City’s Program.

**“Member”** shall mean an Eligible Retail Customer enrolled in the City’s Program.

**“Opt-Out Notice”** shall mean the written notice delivered to each Member by the City, identifying the procedures and protocols that Members must use to elect to not participate in the Program.

**“Opt-Out Period”** shall mean the 14-day period of time during which an Eligible Retail Customer is informed in writing of the opportunity to not participate in the Program.

**“PIPP”** shall mean a Percentage of Income Payment Plan created by the Emergency Assistance Act, 305 ILCS 20-18, to provide a bill payment assistance program for low-income residential customers.

**“PJM”** shall mean the PJM Interconnection, a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia including the ComEd service territory.

**“Plan”** shall mean this Aggregation Plan of Operation and Governance.

**“Power Supply Agreement”** shall mean the contract between the City and the winning ARES (or ARESs).

**“Price to Compare”** shall mean the unit price for ComEd electricity supply services which is the sum of the electricity supply charge and the transmission services charge as established by ComEd Rider PE (Purchased Electricity) and Rate BES (Basic Electricity Service) or their successor Rates and Riders.

**“Program”** shall mean the program established by the City to provide residential and small commercial retail Members and Associate Members with retail electric supply as described in this Plan.

**“Program Database”** shall mean the account information utilized by the City to track Members and Associate Members.

**“Qualified Bidder”** shall mean an entity that is determined by the City to be qualified to submit a bid for to provide energy supply or services to the Program.

**“Rate GAP”** shall mean ComEd’s Government Aggregation Protocols rate.

**“RECs”** shall mean duly certified and verified renewable energy credits.

**“Retail Customer Identification Information”** shall mean the retail customer information supplied by ComEd to the City in connection with the implementation of the Program.

**“RFQ”** shall mean request for qualifications.

**“RFQ Respondent”** shall mean an ARES that submits a response to the City’s RFQ.

**“Small Commercial”** shall mean a retail customer with an annual total energy consumption of less than 15,000 kWh.

**“RPS”** shall mean the statutory requirements related to the procurement of renewable energy resources as included in section 16-115D of the Public Utilities Act. 220 ILCS 5/16-115D.

**“Voluntary Enrollment Members”** shall mean Eligible Retail Customers that seek to join the Program after a period of not being enrolled in the Program.

### **III. ROLE OF THE CITY**

- A. Legal Compliance.** The City shall be responsible adopting: (1) an ordinance authorizing an Opt-Out Electric Aggregation Program; and (2) the Plan of Operation and Governance. The City shall be responsible for issuing all required public notices and conducting all required public hearings concerning this Plan, and any amendments thereto, in accordance with Section 1-92 of the Act. 20 ILCS 3855/1-92.
- B. Consumer Outreach and Education.** The City shall be responsible for coordinating or providing timely and accurate information concerning the Program to City residents. The City may engage the services of the Consultant and ARES(s) for assistance in performing this function.
- C. Identification of Eligible Retail Customers.** The City shall submit initial and ongoing data requests to ComEd seeking the identification of residential and small commercial electric customer account information. The City may undertake, or assign to the Consultant or ARES, the task of verifying which residential and small commercial consumers are located within the City's municipal boundaries. If the City assigns this task to the Consultant or ARES, the City will make available the resources necessary to complete the task including any or all of the following: property records, water and/or sewer records, fire and/or police department address records, 911 address records, street listings, and maps.
- D. Confidentiality.** The City will maintain the customer information it receives in a confidential manner as required by section 1-92(c)(2) (20 ILCS 3855/1-92(c)(2)), and will use that information only for purposes of its electricity aggregation. The City may provide access to the customer information to the Consultant for the purposes of soliciting Electricity Supply and Energy Efficiency Service bids on behalf of the City for the Program. The Consultant is bound by confidentiality requirements in this regard, and shall only access and utilize consumer data at the direction of the City. Customer account information will be considered confidential and will not be disclosed under the Freedom of Information Act, except as required by law.
- E. Solicitation Development.** The City, in cooperation with the Consultant, shall develop standardized solicitation documents in accordance with the terms set forth in this document. The City shall continue to periodically conduct competitive solicitations and enter into Power Supply Agreements so long it is in the best interest of the City's Eligible Retail Customers. The City is under no obligation to enter into any Power Supply Agreement with any ARES and may, in its discretion, choose to not pursue electricity aggregation. If the City were to choose to not pursue electricity aggregation, Chicago residents would continue to receive service pursuant to ComEd's Default Tariff Service or, if individual residents so choose, to receive service from an ARES.
- F. Communication Materials.** The City, in cooperation with the Consultant and ARES(s), shall draft customer notification materials during the switching and Opt-Out Period. The City shall specify the form and content of such materials, and all communications disseminated by the ARES(s) to residential and small commercial account holders during the opt out process must be approved by the City.

- G. Program Surcharges.** The City may negotiate a surcharge to be added to the Fixed Price set forth in any Power Supply Agreement with any ARES, the proceeds of which will be paid by the ARES to the City on mutually agreed to terms. If collected, the City will use such surcharges to reimburse the City for the costs associated with the development and management of the Program and/or to support energy-related initiatives (such as renewable energy and energy efficiency initiatives) that the City seeks to develop for the benefit of City residents.
- H. No Responsibility for Electricity Supply.** The City, as a facilitator of the solicitation process, is not responsible for providing electricity to the Members or Associate Members or for billing or collecting for electricity provided under any Power Supply Agreement, and has no responsibility beyond the duties described herein.
- I. No Responsibility for Accuracy of Account Data.** The City, Consultant and ARES shall have no responsibility to Members or Associate Members for the accuracy of the customer account information provided by ComEd.
- J. Associate Member Program.** The City, in cooperation with the Consultant, may develop an Associate Member Program that would provide Program services to ComEd customers located within the City that are not an Eligible Retail Customer as defined in Section 1-92 of the Act.

#### **IV. ROLE OF THE CONSULTANT**

- A. Code of Conduct.** The Consultant will comply with the code of conduct requirements included in section 16-115C of the Public Utilities Act. 220 ILCS 5/16-115C.
- B. Duties.** The Consultant shall advise and assist the City with the development and implementation of its Program; including advising staff and elected officials on all aspects of the Program, developing necessary documents, assisting in the solicitation and review of bids received, making recommendations as appropriate, and may be assigned the task of monitor the ARES' compliance with the requirements of the Power Supply Agreement.
- C. Required Independence and Disclosures.** As required by section 16-115(c) of the Public Utilities Act (220 ILCS 5/16-115C), the Consultant has a fiduciary relationship with the City and owes the City the duty of loyalty and independent judgment. The Consultant will be disqualified if it acts as the agent for any ARES. It is the duty of the Consultant to disclose any such relationships to the City and to terminate its agency for the ARES in the event of such a relationship. Breach of these terms may result in the termination by the City of the agreement between the City and the Consultant.
- D. Fee.** The Consultant shall be paid directly by the City in accordance with an agreement between the City and the Consultant. The City may be reimbursed for fees paid to the Consultant by the ARES (or ARESs) with whom the City enters into a Power Supply Agreement (or Power Supply Agreements).
- E. Confidentiality.** The Consultant shall not have access to any confidential customer account information unless so allowed by the City. If the Consultant is provided access to

confidential customer account information, it will be bound by a confidentiality agreement. In the event the Consultant becomes privy to any confidential customer account information, it agrees not to use that information for any purposes outside the scope of the services provide by this Agreement, and specifically agrees not to use for itself, or to sell, trade, disseminate or otherwise transfer, that information to any other party for any purpose other than in furtherance of this Program.

- F. City Assistance.** The Consultant shall advise the City on any changes in laws, rules, tariffs or any other regulatory matter that affects the aggregation during the formation of the Program and may be assigned the task of providing such advice during the term of the Power Supply Agreement.

## **V. SUPPLIER SELECTION**

- A. Competitive Selections.** The City, in cooperation with the Consultant, shall utilize a competitive solicitation process to select single or multiple ARES(s) and or single or multiple Energy Efficiency Service Provider(s). The competitive selection process will allow the City to issue written specifications for the energy supplies and services required by Program Members and Associate Members, distribute those specifications to Qualified Bidders, and review proposals in a manner to secure the best value for Members and Associate Members. The City will not be required to enter into agreements with any Bidder pursuant to any solicitation.
- B. Selection Process.** The City may conduct two-phase supplier selection processes. The first phase may be the issuance of an RFQ. The RFQ will be used to identify Qualified Bidders that can participate in the second phase. The second phase of the supplier selection process will be the submission of a bid document to Qualified Bidders.
- C. Request for Qualifications.** For the initial Power Supply Agreement, the City, in cooperation with the Consultant, shall develop an RFQ that will be issued by the City's Department of Fleet and Facility Management. Through the RFQ process, the City will determine Qualified Bidders that meet the criteria specified in the RFQ. If an RFQ Respondent meets all requirements of the RFQ, the RFQ Respondent will be qualified to participate in a future bid process for supply of electricity to program participants.
  - 1. Disclosures.** In determining whether RFQ Respondents are responsible and should be qualified, the City will consider factors that include, but are not limited to, certifications, conflict of interest disclosures, taxpayer identification number, past performance, references, compliance with applicable laws, financial stability, and the perceived ability to perform as specified. RFQ Respondents must have financial resources sufficient, in the opinion of the City, to ensure performance of the Power Supply Agreement and must provide proof upon request.
  - 2. Enrollments.** RFQ Respondents shall describe the manner and time in which the Opt-Out Process will be handled, and the manner in which it communicates with ComEd to enhance Eligible Retail Customer participation in the Aggregation. RFQ Respondents must describe the process for adding new customer accounts to the

Aggregation during the term of the Power Supply Agreement.

- 3. Enrollment Certainty.** RFQ Respondents must submit a detailed schedule and task description report identifying the measures to be taken to ensure timely enrollment of Member accounts. RFQ Respondents must identify possible causes for delay in the enrollment process, present options for mitigating delays, and commit to paying damages for delays in the enrollment schedule that are due to the RFQ Respondent's failure to meet agreed-to performance milestones identified in the schedule. Damages will be calculated as the number of accounts not enrolled multiplied by the Price to Compare multiplied by the number of kWh those accounts consume over the period between the targeted and actual enrollment dates.
- 4. PIPP participation.** RFQ Respondents shall certify that they can provide energy supply service to PIPP participants in a manner that does not cause PIPP participant to lose the benefits of the PIPP assistance program.
- 5. Member Services.** RFQ Respondents must describe how they will provide membership education, supply Opt-Out Notices, respond to customer inquiries, communicate with the public regarding the Program, and any other ongoing consumer education efforts.
- 6. Confidentiality.** RFQ Respondents must describe the controls they have in place to guarantee the confidentiality of customer account information.
- 7. Technical Qualification of Proposers.** RFQ Respondents must demonstrate that they satisfy each of the following requirements:
  - I. Certifications.** RFQ Respondents must document that they possess current and valid certifications and agreements necessary to the delivery of Electricity Supply to the Program:
    - 1. ICC Certification.** RFQ Respondents must have a current certificate of serviced authority from the State of Illinois as a certified retail electric supplier and any and all other licenses or certifications required by the ICC. Bidders must provide proof of their bond posting with the ICC.
    - 2. ComEd Registration.** RFQ Respondents must demonstrate their current registration as a retail electric supplier with ComEd.
    - 3. Existing Transmission Agreements.** RFQ Respondents must demonstrate their current supply agreement(s) for network integration transmission service under open access transmission tariffs.
  - II. Resources.** RFQ Respondents must demonstrate that they possess the resources and systems necessary to serve the Program:

1. **Corporate Support and Resources.** RFQ Respondents must document the necessary corporate structure and local staff to provide energy power supplies to the Program.
2. **EDI Systems.** RFQ Respondents must demonstrate that they possess an existing electronic data interchange computer network that is fully functional at all times and includes back-up file saving systems, and is capable of handling anticipated Program volumes.
3. **Communications Platforms.** RFQ Respondents must demonstrate the ability to receive and respond to inquiries from Program participants, including, at minimum:
  - a. **Marketing Support.** RFQ Respondents must demonstrate that they possess the existing ability to reach Program participants to provide education on the terms of the Program and the Act. Bidders must demonstrate how marketing materials and messages can be provided to Members and Associate Members through, but not limited to, the following communication portals: regular mail; email distribution lists; websites; social media; and phone contact.
  - b. **Toll Free Call Center.** RFQ Respondents must demonstrate that they maintain - or will maintain - a toll-free telephone access line which shall be available to Program Members and Associate Members 24 hours a day, seven days a week. The call center shall be located in the United States. Trained company representatives shall be available to respond to customer telephone inquiries Monday through Friday from 6:00 am CDT to 9:00 pm CDT. Outside of these hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after required hours shall be responded to by a trained company representative on the next business day. Under normal operating conditions, telephone answer times by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds.
  - c. **Program Website.** RFQ Respondents must demonstrate that they maintain – or will maintain - a dedicated website for the Members and Associate Members. The website shall provide basic information concerning the Program and shall facilitate customer inquiries by providing a platform for the submission of questions. The website shall allow for opt outs during the Opt-Out Period and for enrollments after the Opt-Out Period.

Responses to inquiries submitted through the website platform shall be made within 24 hours.

**d. Multiple Languages.** RFQ Respondents must demonstrate the ability to provide customer service for Members requiring non-English verbal and written assistance.

**e. Hearing Impaired Services.** RFQ Respondents must demonstrate the ability to provide customer service for hearing-impaired Members.

**III. Policy Commitment.** RFQ Respondents must certify that they will comply with policy commitments deemed as priorities by the City. At a minimum, RFQ Respondents shall commit to the following:

**1. Minority- and Woman-Owned Business Participation.** RFQ Respondents must demonstrate minimum participation levels for minority- and women-owned businesses in the fulfillment of Program requirements. The City will establish the goals that RFQ Respondents must meet.

**2. Compliance with the Law.** RFQ Respondents must commit to comply with all applicable laws and regulations of the State of Illinois and the City of Chicago.

**3. Bilateral Contracts.** RFQ Respondents must certify that it will (i) facilitate existing and future bilateral contracts with entities specified by the City for Electricity Supply and services; and (ii) treat such bilateral contracts as pass-through expenses without additional markup beyond the terms allowed in the Agreement to the Members and the Associate Members.

**8. RFQ Response Evaluation.** The City, in cooperation with the Consultant, will evaluate RFQ Responses using the following criteria:

**I.** Technical qualifications.

**II.** Quality of the response to the solicitation.

**III.** Quality of the communications plan and timeline.

**IV.** Experience in the ComEd service region.

**V.** Ability to enroll customers into the Program pursuant to an established schedule.

**VI.** Any other factors deemed to be in the City's best interest.

**9. Single or Multiple ARES.** In the event the City determines that multiple ARES should be engaged as suppliers to the Program, the City will establish a method for fairly distributing Member accounts among the multiple ARES.



**D. Electricity Supply Bids.** The City, in cooperation with the Consultant, shall develop bid documents that will be distributed to Qualified Bidders. The solicitation documents will request bids for Electricity Supply. The City shall receive and evaluate bids and may enter into Power Supply Agreement with either a single or multiple ARES. The City shall be under no obligation to enter into any Agreement with any ARES and may, at its discretion, choose to reject all bids or to conduct a new solicitation to provide Electricity Supply under the same or amended terms of this Plan.

**1. Contents of the Bids.** The solicitations issued by the City on behalf of Members and Associate Members shall include at least the following contents:

**I. Term of Agreement.** Bidders may specify the term period for their proposal. However, the City shall have the discretion to establish the term and period of any agreement based on a determination of the best interests of Members and Associate Members.

**II. Power Mix.** The City may seek the cleanest and most efficient power mix possible without increasing cost. The power content of the electricity to be supplied to the Program will be negotiated between the Supplier and the City and will be known prior to delivery of the power supply. In addition, the City may require Bidders to identify the generation resources from which they plan to supply Program Members and Associate Members. The City may limit or prohibit electricity procured from certain generation types. **Rates.** One of the City's objectives in soliciting bids is to provide Members and Associate Members with delivered electricity prices that are less than the Price to Compare. As such, Bidders must commit to a rate that is below the Price to compare during the entire term of the Agreement. In the event the Price to Compare is less than the Supplier's rate, then the Supplier will have the option of:

1. Reducing the Agreement Fixed Price to a rate at least equal to or below the Price to Compare; or
2. Transferring Program accounts to Default Tariff Service at the discretion of the City; or,
3. Transferring Program accounts to another ARES (or ARESs) selected by the City.

## **VI. POWER SUPPLY SERVICE AGREEMENT**

The City, at its option, will execute a Power Supply Agreement with one or multiple selected ARES.

**A. Term.** The City shall have the discretion to set the length of any Agreement term. During the term of any Agreement or the term of any Agreement extension or renewal, the

Consultant will notify the City of changes in the rules or actions of the ICC and IPA that require changes in rates or service conditions.

- B. Rate.** The Agreement shall specify the approved rates and the power mix for the Program, and shall specify additional fees (if any). The Agreement shall also specify any monies that are to be remitted to the City (1) to reimburse the City for the for the costs associated with the development and management of the Program and/or (2) to support energy-related initiatives (such as renewable energy and energy efficiency initiatives) that the City seeks to develop for the benefit of City residents.
- B. Participation.** The City may, at its discretion, enter an Agreement with one or multiple ARES to provide terms, prices, and specific service requirements for the Program. The Program will be comprised of Program Members and may include Associate Members.
- C. Scope.** The City may, at its discretion, elect to secure Energy Efficiency Services as well as Energy Supply through the Power Supply Agreement.
- D. Electricity Supply.** The ARES(s) shall supply the Full Electricity Requirements for the Program Members in accordance with the provisions as noted below:
  - 1. Supply of Power.** The City reserves the right to require the ARES(s) to specify the power source content for the electricity it secures for Program needs. Additionally, the City reserves the right to specify that certain bilateral electricity supply arrangements be incorporated into the supply portfolio that supports the Program. The pricing for such bilateral contracts will be facilitated by the ARES(s) as pass-through expenses without additional markup beyond the terms allowed in the Agreement.
  - 2. Supply of Capacity.** The City reserves the right to require the ARES(s) to specify the sources for the capacity it secures for Program needs. Additionally, the City reserves the right to specify that certain bilateral capacity arrangements be incorporated into the supply portfolio that supports the Program. The pricing for such bilateral contracts will be facilitated by the ARES(s) as pass-through expenses without additional markup beyond the terms allowed in the Agreement.
  - 3. Supply of Transmission Services.** The ARES(s) shall arrange for such transmission services that are required to deliver electricity to the Delivery Point on behalf of the Members and Associate Members.
  - 4. Renewable Portfolio Standard.** The selected ARES(s) are required, at a minimum, to comply with the Illinois RPS. The City reserves the right to require that the selected ARES(s) procure renewable resources that exceed the current renewable energy resource requirements of the RPS.
- E. Compliance with Requirements in the Energy Supply Bid.** The Power Supply Agreement shall require the ARES(s) to maintain all required qualifications and certifications and to provide all services required pursuant to the Power Supply Services Bid.
- F. Compliance with the Plan.** The Power Supply Agreement shall require the ARES(s) to provide all services in compliance with this Plan, as may be amended. Specifically, and

without limitation of the foregoing, the ARES(s) shall provide the City with such reports and information as required in this Plan.

- G. Non-Competition.** The Power Supply Agreement shall require the ARES(s) to not solicit or directly contract Eligible Retail Customers in the City for service or rates outside the Aggregation Program, and agrees not to use Member or Associate Member customer Account Information for any marketing purposes after the expiration of the Power Supply Agreement.
- H. Equal Treatment.** The Power Supply Agreement shall require the ARES(s) to provide equal Program access and not deny service to any Eligible Retail Customer. The ARES(s) shall not change rates for and Program Member or Associate Member unless such rate changes are provided for in the Agreement.
- I. Hold Harmless.** The Power Supply Agreement shall require the ARES(s) to agree to hold the City financially harmless from any and all financial obligations arising out of the City's role as facilitator of the Program.
- J. Insurance.** The Power Supply Agreement shall require the ARES(s) to obtain and maintain, for the duration of the Power Supply Agreement, such proof of insurance and performance security as the City deems necessary.
- K. Additional Services.** The Power Supply Agreement may provide that the ARES(s) assist the City in developing a Member education plan. The Power Supply Agreement may provide that the ARES(s) assist the City in developing energy efficiency and/or demand response programs. The Power Supply Agreement will not preclude the City from developing its own Member education plan, energy efficiency, and/or demand response programs.
- L. Fees and Charges.** The Power Supply Agreement shall establish the following limits on fees and charges:
  - 1. The ARES shall not impose any terms, conditions, fees, or charges on any Member or Associate Member served by the Program unless the particular term, condition, fee, or charge is: (a) identified in this Plan; and (b) clearly disclosed to the Member or Associate Member at the time the Member or Associate enrolls in, or chooses not to opt out of, the Program.
  - 2. ComEd will continue to bill Members and Associate Members for late payments, delivery charges, monthly service fees, taxes, etc. These charges will remain the obligation of the Member or Associate Member in the event they leave the Program.
  - 3. Termination, enrollment, and switching fees shall not be charged except as permitted by this Plan.
- M. Costs.** The Power Supply Agreement may require that all costs of Program development and administration may be paid by the ARES(s).
- N. Termination of Service.** The Power Supply Agreement shall establish the following requirements concerning termination of service from the ARES(s) to the Program:

**1. End of Term.** The Power Supply Agreement with the ARES will terminate upon the expiration date in the contract. In the event that a renewal with the ARES, or new Power Supply Agreement with another ARES(s) has not been executed, the ARES will, at the option of the City, either (i) return all Program Members and Associate Members to the ComEd Default Tariff Rate, or, (ii) continue to provide service to Members and Associate Members.

- I. If the City determines to allow the ARES(s) to continue supplying Members and Associate Members on a month-to-month basis, the ARES will provide such service at a rate based on fair market value of electricity that is below the Price to Compare.
- II. If the ARES(s) cannot provide Electricity Supply at a rate below the Price to Compare, the ARES(s) may, (i) return Members and Associate Members to the ComEd Default Tariff Rate provided it gives the City thirty (30) days' notice, or (ii) at the direction of the City, facilitate the transfer of the Members' and Associate Members' accounts to another ARES(s) selected by the City.
- III. If the City determines to allow the ARES(s) to continue supplying Members and Associate Members on a month-to-month basis, the ARES will continue under such an arrangement until the City provides it with 30 day written notice to discontinue providing service.

**2. Early Termination.** The City will have the right to terminate the Power Supply Service Agreement prior to the expiration of the term in the event an ARES commits any act of default. Acts of default include but are not limited to the following:

- I. Breach of confidentiality regarding Member or Associate Member customer account information;
- II. The disqualification of the ARES to perform the services due to the lapse or revocation of any required license or certification identified as a qualification in the RFQ or Bid processes;
- III. ComEd's termination of its relationship with the ARES;
- IV. Any act or omission which constitutes deception by affirmative statement or practice, or by omission, fraud, misrepresentation, or a bad faith practice;
- V. Billing in excess of the approved rates and charges;
- VI. Billing or attempting to collect any charge other than the approved kWh rates and contractually approved charges; or
- VII. Failure to perform at a minimum level of customer service required by the City.

Upon termination for any reason, the ARES(s) shall, at the direction of the City, either (i) return Members and Associate Members to the ComEd Default Tariff Rate, or (ii) facilitate the transfer the Members' and Associate Members accounts to another

ARES(s) selected by the City. Upon termination of a Power Services Supply Agreement, each affected Member and Associate Member will receive written notification from the City notifying them of the termination and the alternative supply arrangements the City has arranged.

## **VII. IMPLEMENTATION PROCEDURES**

**A. Development of Program Database.** Pursuant to ICC regulations, the City has and will periodically submit a municipal authority data request form (or its successor form) to ComEd, requesting that ComEd provide the City the aggregated customer usage data and customer names and mailing addresses. Pursuant to ComEd's Rate GAP, ComEd will provide the City with the requested information within 10 business days after receiving the request in accordance with those adopted protocols.

The City may utilize the assistance of the Consultant to remove any consumers determined to be ineligible due to one or more of the following:

1. The consumer is not located within the City limits;
2. The consumer has a pre-existing agreement with another ARES and has not delivered to the City a request to switch to the Program;
3. The consumer has free ComEd service;
4. The consumer is receiving service from ComEd on Rate BESH (Basic Energy Service Hourly Pricing);
5. The consumer is receiving service from ComEd on a rate that offers a price lower than the Program's Electricity Supply Price;
6. The consumer is on a ComEd bundled hold status.

The information for the consumers identified as Eligible Retail Customers will serve as the basis for the Program Database. The Program Database and the retail customer identification information will remain the property of the City. The City may assign maintenance of the Program Database to the ARES(s) which shall comply with the confidentiality and non-compete provisions in the Power Supply Agreement.

After the retail customer identification information is reviewed, the City may itself, or elect to assign to the ARES(s), mail an initial Opt-Out Notice described below to all Eligible Retail Customers. Eligible Retail Customers that request to Opt-Out of the Program will be identified in the Program Database.

**B. Maintenance of Accurate and Secure Customer Records.** The City may assign the ARES(s) the responsibility to maintain the Program Database which will contain customer account information. Customer account information will include each account's retail customer identification information, the ComEd account number, the ARES account number, applicable rate code, applicable rider code, billed usage, and demand history. The database will be updated on an ongoing basis.

The City and ARES(s) shall preserve the confidentiality of all Members' and Associate Members' account information and of the database, and shall agree to adopt and follow protocols to preserve that confidentiality:

1. The ARES(s), as a material condition of the Agreement, shall not disclose, use, sell or provide Members' or Associate Members' account information to any person, firm or entity for any purpose outside the operation of the Program. This provision will survive the termination of the agreement.
2. The City and ARES, upon receiving customer account information from ComEd, shall be subject to the limitations on the disclosure of that information described in Section 2HH of the Consumer Fraud and Deceptive Practices Act. 815 ILCS 505/2HH.
3. The ARES(s) shall keep Customer account information for a minimum of two years following the termination of the Service Agreement.
4. The ARES(s) shall provide the City with access to the Program Database as well as standard and customized reports upon request.

**C. Opt-Out Process.** The City's Program is an opt-out program pursuant to section 1-92 of the Act. 20 ILCS 3855/1-92. Any Eligible Retail Customer who opts out of the Program pursuant to the procedures stated below will remain on the ComEd Default Tariff Service unless and until the accountholder chooses another ARES or decides to join the Program.

1. **Manner of Providing Notices and Information.** The City will mail to each Eligible Retail Customer a written Opt-Out Notice to the address provided in ComEd's response to the City's request for Retail Customer Identification Information. The Opt-Out Notice will be printed on City Stationary, and sent in an envelope complete with a City return address and seal. The City may elect to assign the management and payment for the Opt-Out Notice process to the winning ARES(s), the Consultant, or another entity.
2. **Content of Notice.** The City will establish the format and contents of the Opt-Out Notice prior to distribution or mailing. The Opt-Out Notice will inform the Eligible Retail Customer of the existence of the electricity aggregation Program, the identity of the ARES selected to provide supply services to their account, the rates to be charged by the winning ARES, the comparable rates charged by ComEd, the percentage savings represented by the winning ARES offer, and the terms and conditions of the winning ARES(s)' agreement(s).

The Opt-Out Notice will inform PIPP customers that they may participate in the Program and not lose PIPP eligibility by participating in the Program. The Opt-Out Notice will inform recipients that have existing supply contracts with other ARES that they may join the Program at their own option.

The Opt-Out Notice will specify the methods for exercising the opt-out option including a postage-prepaid Opt-Out card that will be attached to the Opt-Out Notice. Additional means of providing opt-out notification to the City such as a toll-

free number, website, smart device quick response code, email address or fax number may be included in the Opt-Out Notice.

The Opt-Out Notice shall indicate that it is from the City, and include the City's name and seal on the envelope. The Opt-Out Notice shall be signed by a representative of the City.

- 3. Opt-Out Period.** Eligible Retail Customers shall have 14 calendar days from the postmark date on the Opt-Out Notice to notify the City of their intention to opt out of the City's Program. The time to respond shall be calculated based on the postmark date of the notice to the customer and the postmark date of the customer's response. Upon notification of intent to opt out of the Program, the account will be removed from the Program Database.

After the expiration of the Opt-Out Period, the Member list shall become final. All Eligible Retail Customers who have not provided notice of intent to opt out of the Program will be automatically enrolled as Members in the Program. Eligible Retail Customers will not have to take any steps to be included in the Program.

In the event that an Eligible Retail Customer has inadvertently not sent an Opt-Out Notice, or omitted from the Program, the City and the winning ARES(s) will work with the Eligible Retail Customer to ensure that their decision to remain in or opt out of the Program is properly recorded and implemented by the ARES.

- 4. Data Request to ComEd.** After the Opt-Out Notice period has expired, the City shall submit a Municipal Authority Data Request Form (or its successor Form) to ComEd, requesting that ComEd provide the City with the account numbers for Program Members. Pursuant to Rate GAP, ComEd will respond to the request within the ten (10) days.
  - 5. Notification to ComEd.** The winning ARES(s) shall correlate each Member with their applicable ComEd account numbers. The winning ARES(s) shall submit to ComEd the account numbers for each Member to be enrolled into the Program and the rate to be charged to those Members pursuant to the Power Supply Agreement. The winning ARES(s) shall provide the account enrollment information in the format required by ComEd.
  - 6. ComEd Communication with Customers.** ComEd will then notify Members that they have been switched to the Program's winning ARES(s) and provide the Member with the name and contact information of the winning ARES. Members will have the option to rescind their participation in the Program according to procedures established by ComEd.
- D. Activation of Service.** Upon notification to ComEd, the winning ARES(s) will begin to provide electric power supply to the Members of the Program. The service will begin on the Member's normal meter read date within a month when power deliveries begin under the Program. Members will continue to receive their monthly billing statements from ComEd. Members will continue to issue their monthly payments to ComEd.

- E. Subsequent Enrollments and Deletions.** The winning ARES(s) shall establish procedures and protocols to work with ComEd on an ongoing basis to add, delete, or change any Member's status with the Program. After the initial Opt-Out period, new Eligible Retail Customers can join the Program under the following mechanisms.
- 1. New Account Holders.** The winning ARES(s) shall facilitate the addition of new Member accounts to the Aggregation Program during the term of the Power Supply Agreement. The City will periodically submit a request to ComEd for aggregated customer usage data and the names and mailing addresses for Eligible Retail Customers. The City, with the assistance of the winning ARES(s) and the Consultant, shall compare the new aggregated customer usage data and customer names and mailing addresses against the Program Database to identify new Eligible Retail Customers. The City and the winning ARES(s) will follow the Opt-Out Notice Process identified in Section VII(C) above to notify the new Eligible Retail Customers of the Program and allow them an opportunity to opt out of the Program. New Eligible Retail Customers who do not opt out of the Program will be enrolled into the Program. All new accounts shall be entitled to the rates set forth in the Power Supply Agreement.
  - 2. Voluntary Enrollment.** Eligible Retail Customers who chose to opt out of the Program during the Initial Opt-Out Period, and new account holders not enrolled through the processes described in Section VII(E)(1) above shall be allowed to join the Program at any time. These Eligible Retail Customers can enroll in the Program by contacting the winning ARES and completing an enrollment application. All Voluntary Enrollment Members shall be entitled to the rates set forth in the Power Supply Agreement. Once Voluntary Enrollment Members have completed the steps necessary to join the Program, they shall be considered Members.
  - 3. Change of Address.** Members who move from one location to another within the corporate limits of the City may enroll their new accounts into the Program through either of the processes identified in Sections VII(E)(1) or VII(E)(2) of this Plan.
- F. Member Services.** At minimum, the winning ARES(s) shall provide the following services for the Program. Additional services from the winning ARES(s) or other service providers may be required by the City in the future.
- 1. Program Management and Documentation.** The winning ARES(s) shall have a standard operating procedures manual that governs the activities and responsibilities of the winning ARES(s) staff assigned to the City's Program. At minimum, the winning ARES(s) shall have in place protocols and procedures that address member education, Opt-Out Notification, member inquiries, database management, reporting, and new account enrollment.



2. **Member Interaction.** The winning ARES(s) shall be responsive to the City's, Members', and Associate Members' inquiries about the Program.
  - a. **Receiving Inquires.** The winning ARES(s) shall maintain at least the following options for receiving and responding to Member and Associate Member Inquiries.
    1. **Telephone Inquiries.** The winning ARES(s) shall maintain a local or toll-free telephone access line which will be available to Members and Associate Members 24 hours a day, seven days a week. Trained company representatives will 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. Under normal operating conditions, telephone answer times by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.
    2. **Internet and Email.** The winning ARES(s) shall establish and maintain a website for Members and Associate Members. The website shall provide basic information concerning the Program and will facilitate Member and Associate Member inquiries by email and or text. Responses to inquiries submitted through the website must be made by the next business day.
    3. **Bilingual Services.** The winning ARES(s) shall provide customer service for Members and Associate Members requiring non-English verbal and written assistance.
    4. **Hearing Impaired.** The winning ARES(s) must provide customer service for hearing impaired and hard of hearing Members and Associate Members.
  - b. **Responding to Inquiries.** The winning ARES(s) shall provide Members and Associate Members with the most accurate and actionable responses.
    1. **Procedures for Handling Members' and Associate Members' Reliability Issues.** Inquiries or concerns regarding electricity service reliability shall be directed to ComEd.
    2. **Procedures for Handling Members' and Associate Members' Billing and Enrollment Issues.** Inquiries or concerns regarding billing issues

shall be directed to the entity with primary responsibility for the billing issue in question.

- a. **Non-receipt of monthly bill.** Member and Associate Member inquiries or concerns regarding the issuance and receipt of monthly bills shall be directed to ComEd.
  - b. **Bill Payment Issues.** Member and Associate Member inquiries or concerns regarding the status of outstanding payment balances and past due issues shall be directed to ComEd.
  - c. **Distribution Charges or Taxes and Fees portions of the monthly bill.** Member and Associate Member inquiries or concerns regarding the accuracy of the distribution charges or taxes and fees portions of the monthly bill shall be directed to ComEd.
  - d. **Electricity Supply Services or Program price portion of the monthly bill.** Member and Associate Members inquiries concerning the electricity supply services or Program price portion of the monthly bill shall be directed to the winning ARES(s).
  - e. **Program Enrollment.** Eligible Retail Customer, Member, and Associate Member inquiries concerning the Program enrollment shall be directed to the ARES(s).
- c. **Procedures for Handling Disputes.** The winning ARES(s) will have direct contractual obligations with each Member and Associate Member. Disputes between the winning ARES(s) and Members and Associate Members shall be resolved at the earliest opportunity. Consistent with regulatory practice, any unresolved disputes should be directed to the ICC. The nature and extent of disputes between Members and Associate Members and the winning ARES(s) may serve as the basis for termination of the Agreement with the winning ARES(s) consistent with the provisions of Section VI(N)(2) of this Plan.
  - d. **Updates and Disclosures.** The winning ARES(s) shall provide the Program Members and Associate Members with updates and disclosures mandated by the ICC, the IPA or the City.
  - e. **Online Account Data.** The City may require the winning ARES(s) to provide Members and Associate Members with access to their individual customer account data and energy-related information (historical consumption, costs, comparisons with regional norms, energy efficiency and distributed energy program options, etc.) for

the purposes of providing Members and Associate Member with the ability to better control energy consumption and costs.

**G. Billing and Fees.** Billing procedures and the applications of fees shall follow the following guidelines and requirements.

1. **Billing Method.** The winning ARES(s) will utilize the utility consolidated billing/purchase of receivables (UCB/POR) billing method. Under this method, ComEd shall prepare the bill for both ComEd's electric delivery charges and the winning ARES(s) electric supply charges and mail one bill to the customer. ComEd shall purchase the electric supply charges from the ARES(s) on the bill due date and treat those receivables as its own for credit purposes. ComEd shall retain the ability to disconnect for customer non-payment of the winning ARES(s) electric supply charges.
2. **Collection and credit procedures.** Responsibility for collections and credit issue remain the responsibility of the ComEd and the individual Members and Associate Members. Members and Associate Members are required to remit and comply with the payment terms of ComEd. The City will not be responsible for late payment or non-payment of any Member or Associate Member accounts. Neither the City nor the winning ARES(s) shall have separate credit or deposit policies for Members or Associate Members. The City shall require the winning ARES(s) to utilize the ComEd purchase of receivables option for retail suppliers.
3. **Early Termination Fee.** Members and Associate Members may terminate service from the winning ARES without penalty for any reason at any time without fee or penalty.
4. **Enrollment Fee.** Eligible Retail Customers may join the Program at any time without fee or penalty.
5. **Switching Fee.** Members and Associate Members changing residency within the City will not be assessed early termination or enrollment fees.

**I. Reliability of Power Supply.** The Program will not affect the reliability of electricity service for Members and Associate Members. ComEd will continue to deliver power through their transmission and distribution systems. Responsibility for maintaining system reliability will remain with ComEd. If Members or Associate 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. Member and Associate Member outages, duration of outages, interruptions, etc., are monitored to ensure reliability remains at ICC-approved levels. In addition to maintaining the "wires" system, ComEd is required to be the "provider of last resort." This means that if the winning ARES(s) fails for any reason to deliver any or all of the electricity needed to serve the Members' or Associate Members' needs, ComEd will immediately provide for the shortfall. ComEd would then bill the winning ARES(s) for the power provided on its behalf. In such a situation, the Members and Associate Members shall incur no additional cost.

## **VIII. ADDITIONAL SERVICE TERMS AND CONDITIONS**

**A. Reporting.** The winning ARES(s) will provide to the City and to the Consultant the following reports:

1. **Power Mix Reporting.** The winning ARES(s) shall deliver quarterly reports to the City and the Consultant which demonstrate that: (a) it generated or purchased electricity with the claimed attributes in amounts sufficient to match actual consumption by the City; (b) the electricity was supplied to the interconnected grid serving the City.

The report will show the source of the power and demonstrate that the power was provided in accordance with the RPS and the federal Clean Air Act regulations and permits.

If required by the City, the report will also demonstrate that the generation resource mix meets the requirements set forth by the City in the Power Supply Agreement.

2. **REC Reporting.** The ARES shall deliver reports that provide competent and reliable evidence to establish that it purchased properly certified RECS in a sufficient quantity to offset the non-renewable energy provided in the mix.
3. **Aggregation Reports.** The ARES shall provide the City with quarterly reports showing the number of Members and Associate Members participating in the Aggregation Program and the total cost for energy provided to the Program Members and Associate Members as compared to the ComEd Default Tariff rate.

**B. Limitation of Liability.** The City shall not be liable to Eligible Retail Customers, Members, or Associate Members for any claims, however styled, arising out of the Program or out of any City act or omission in facilitating the electricity aggregation Program.

## **IX. INFORMATION AND COMPLAINT NUMBERS**

Copies of this Plan will be available from the City free of charge at [www.cityofchicago.org/electricityaggregation](http://www.cityofchicago.org/electricityaggregation). Any electric customer, including any participant in the City's Program, may contact the Illinois Commerce Commission for information, or to make a complaint against the ARES or ComEd. The ICC may be reached toll free at 217-782-5793

**ATTACHMENT 6**

**DRAFT AGREEMENT**

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## Power Supply Agreement

### By and Between

The City of Chicago and \_\_\_\_\_

This Power Supply Agreement is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2012 (**Agreement**), by and between the City of Chicago (City), an Illinois municipal corporation, and \_\_\_\_\_ ("**Supplier**"), a [**State of Incorporation**] corporation with an office located at [**Local Illinois Address**]. **Supplier** and the City of Chicago are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

### WITNESSETH

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

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

**WHEREAS**, the corporate authorities of the City have approved the placement of a referendum on the ballot for the March 20, 2012 primary election regarding the establishment of an "opt-out" Aggregation Program pursuant to the Act; and

**WHEREAS**, the a Request for Pricing was issued on [MONTH] [DATE], 2012; and

**WHEREAS**, Supplier is an ARES certified by the Illinois Commerce Commission and was identified as the lowest responsible bidder pursuant to the Request for Pricing; and

**WHEREAS**, the City has selected Supplier as the supplier for the Electricity Aggregation Program; and

**WHEREAS**, the City and Supplier desire to establish the rights and obligations of the Parties with respect to aggregating, determining a Fixed Price and providing Full Electricity Supply and related services for the Aggregation Program.

**NOW, THEREFORE**, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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

Whenever used in this Agreement, the following terms shall have the meanings defined below except where the context indicates otherwise:

- A. **Act** - The Illinois Power Agency Act, 20 ILCS 3855/1-1 et seq.
- B. **Affiliate** - Any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future directly or indirectly controls, is controlled by, or is under common control with Supplier.
- C. **Aggregation** - The pooling of residential and small commercial retail electrical loads located within the City for the purpose of soliciting bids and entering into service agreements to facilitate for those loads the sale and purchase of electricity and related services, all in accordance with Section 1-92 of the Act.
- D. **Ancillary Services** - The necessary services that shall be provided in the generation and delivery of electricity. As defined by the Federal Energy Regulatory Commission, "Ancillary Services" include, without limitation: coordination and scheduling services (load following, energy imbalance service, control of transmission congestion); automatic generation control (load frequency control and the economic dispatch of plants); contractual agreements (loss compensation service); and support of system integrity and security (reactive power, or spinning and operating reserves).
- E. **ARES** - has the same meaning as that set forth in section 16-102 of the Public Utilities Act. 220 ILCS 5/16-102.
- F. **Associate Member** - A commercial retail electric account that is not an Eligible Retail Customer that elects to enter into a supply agreement with an ARES (or ARESs) serving as a supplier (or suppliers) to the City's Electricity Aggregation Program. An example of an Associate member is an account receiving service from ComEd under the Small Business tariff that consumes more than 15,000 kWh in a year.
- G. **City** - The City of Chicago
- H. **ComEd** - The Commonwealth Edison Company
- I. **Default Tariff Service** - The electricity supply services available to Eligible Retail Customers by ComEd.
- J. **Delivery Point** – The Commonwealth Edison Company.
- K. **Designee** - The person (or persons) empowered by the City through Ordinance to authorize and execute a contract price for electricity supply on behalf of the Electricity Aggregation Program.
- L. **Electricity Supply** - The electricity commodity plus necessary capacity, transmission, distribution, and ancillary services provided to Program Members.

- M. Eligible Retail Customer** - The residential and small commercial retail customers of ComEd located within the City limits and eligible to participate in the Program as defined in section 1-92 of the Act (20 ILCS 3855/1-92).
- N. Extended Term** - Defined in Section 3.A of this Agreement.
- O. Fixed Price** – A non-variable and guaranteed Full Commodity Price for a specified period. This price includes all costs associated with delivering electricity to the Delivery Point and ComEd’s Utility Consolidated Billing and Purchase of Receivables services.
- P. Force Majeure Event** - Defined in Section 6.C of this Agreement.
- Q. Full Commodity Price** – The all-inclusive costs associated with delivering electricity to the Delivery Point plus costs associated with ComEd’s Utility Consolidated Billing and Purchase of Receivables services. Such costs include, but are not limited to: tariff charges, rates and rate adjustments, transportation costs, capacity charges, ancillary service costs and credits, hedging and risk management fees, losses, and all other surcharges, taxes, custom duties/charges and balancing costs.
- R. Full Electricity Requirements** - A sale of electricity supplies and services by the supplier in which the seller pledges to meet all of the each Member’s requirements, and the Members pledge to buy all of their electricity requirements from the supplier, for the delivery period identified in the pricing confirmation to this Agreement
- S. Member** - An Eligible Retail Customer enrolled in the City’s Program.
- T. Opt-Out** - The process by which a Member who would be included in the Aggregation Program chooses not to participate in the Aggregation Program.
- U. Price to Compare** - The unit price for ComEd electricity supply services which is the sum of the electricity supply charge and the transmission services charge as established by ComEd Rider PE (Purchased Electricity) and Rate BES (Basic Electricity Service) or their successor Rates and Riders.
- V. Program** - The program established by the City to provide residential and small commercial Members and Associate Members with retail electric supply as described in this Plan.
- W. PIPP** - The Percentage of Income Payment Plan created by the Emergency Assistance Act, 305 ILCS 20-18, to provide a bill payment assistance program for low-income residential customers.
- X. PJM** - The PJM Interconnection, L.L.C., a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 11 states and the Province of Manitoba, including the ComEd Illinois service territory.
- Y. Plan** - The Aggregation Plan of Operation and Governance adopted by the City pursuant to the requirements set forth in Section 1-92 of the Act.
- Z. REC** - Renewable Energy Credits.
- AA. Regulatory Event** - Defined in Section 6.B of this Agreement.



- BB. **Services** – Defined in Article 5 of this Agreement.
- CC. **Small Commercial** – Non-residential retail customers with an annual consumption of less than 15,000 kWh per 220 ILCS 5/16-102.
- DD. **Term** – Defined in Section 3.A of this Agreement.
- EE. **Terms and Conditions** – Defined in Section 5.B of this Agreement.

### ARTICLE 3: TERM

A. **Term of Agreement.** This Agreement commences on the date first written above, provided however, the supply service to Members shall not commence until the ComEd’s confirmation of member enrollment with Supplier and shall continue for [TO BE DETERMINED] months, unless the Price to Compare for ComEd Default Tariff Service falls below the Fixed Price as noted in the current Confirmation attached to this Agreement. If the Price to Compare falls below the Fixed Price, then the Supplier, at its option, may establish a rate equal to the ComEd Price to Compare or terminate this agreement and return Members to the ComEd Default Tariff Service at no cost to the City or the Members.

B. **End of Term.** The Power Supply Agreement with the ARES will terminate upon the expiration date in the contract. In the event that a renewal with the ARES, or new Power Supply Agreement with another ARES(s) has not been executed, the ARES will, at the option of the City, either (i) return all Program Members and Associate Members to the ComEd Default Tariff Rate, or, (ii) extend the Agreement according to the terms in Article 3, Section C of this Agreement.

C. **Extension.** The City and the Supplier may extend the Term of this Agreement for additional periods of time up to [TO BE DETERMINED] billing cycles for each extension, by written mutual agreement approved and executed by each of them (each an “**Extended Term**”), which such extension may, among other things, provide for an opportunity to refresh the Fixed Price. Any modification to the Fixed Price in an Extended Term shall require Supplier issuance of a new opt-out notice for the Extended Term to all Members. Nothing in this Article related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by the City to the Supplier shall continue beyond the Term or an approved Extended Term. The City and Supplier may agree to allow the Supplier to continue to provide service to Members and Associate Members on a month-to-month basis after the expiration of the Power Supply Agreement.

1. If the City determines to allow the ARES(s) to continue supplying Members and Associate Members on a month-to-month basis, the ARES will provide such service at a rate based on fair market value of electricity that is below the Price to Compare.

2. If the City determines to allow the ARES(s) to continue supplying Members and Associate Members on a month-to-month basis, the ARES will continue under such an arrangement until the City provides it with 30 day written notice to discontinue providing service.

**D. Notification.** In the event the City decides either (a) the Program will terminate upon expiration of this Agreement, or (b) that that it would like to select another Supplier, then the City must provide notice to Supplier at least 90 days prior to the first expiration date with any Member.

#### **ARTICLE 4: PROGRAM RESPONSIBILITIES**

##### **A. City Responsibilities.**

**1. Program Responsibilities.** The City shall perform applicable duties related to the Program as required by Section 1-92 of the Act, e.g. adopting an ordinance authorizing aggregation, submitting a referendum to its residents, abiding by notice and conduct requirements of general election law, developing a plan of operation and governance, holding public hearings, and informing residents of opt-out rights.

**2. Customer Information.** Supplier and City shall cooperate to obtain the Customer Information from ComEd, subject to the limitations on disclosure of the Customer Information established at law, including without limitation the Act, 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.

**3. Notices from ComEd.** The City shall promptly forward to Supplier any notices received by the City from ComEd concerning the accounts of Members.

**4. No City Obligations to Provide Services.** The Parties acknowledge and agree that the City is not responsible to provide, and this Agreement shall not be construed to create any responsibility for the City to provide, the Services to any person or entity, including without limitation the Supplier, ComEd, or any Member.

**5. No City 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 City to any other person or entity, including without limitation Supplier, ComEd, or any Member.

##### **B. Supplier Obligations.**

**1. Provision of Services.** The Supplier shall provide all of the Services described in Article 5 of this Agreement throughout the Term. The Supplier acknowledges and agrees that the City is not responsible to provide, and shall not be liable to the Supplier or any Member for any failure to provide, any Services pursuant to this Agreement.

**2. Compliance with Applicable Law.** Supplier shall comply with all requirements of law, including the Aggregation Ordinance, Plan of Governance, Illinois Power Agency Act, rules and regulations of the Illinois Commerce Commission, tariffs applicable to ComEd, PJM, and all other applicable federal, state, and local laws, orders, rules and regulations, including the terms and conditions in providing the Services pursuant to this Agreement.

**3. Compliance with Plan of Operation and Governance.** The Supplier shall provide all services required under this Agreement in accordance and compliance with the Plan of Operation and Governance adopted by the City, provided that if there is any discrepancy between (a) the Plan of Operation and Governance, and (b) this Agreement, the terms of this Agreement shall prevail.

## **ARTICLE 5: SUPPLIER SERVICES**

The Supplier shall supply all of the following services in support of the Program (collectively, the “Services”):

### **A. Electricity Supply.**

#### **1. Electricity Supply.**

- a. **Transmission.** Supplier will acquire and pay all necessary transmission services up to the Delivery Point to deliver electricity supply to Members, including all electricity commodity costs, PJM charges, congestion charges, distribution and transmission losses, and capacity charges.
- b. **Billing.** To the extent allowed by law and the ComEd tariff, Supplier shall make all arrangements for Members to receive a single monthly bill from ComEd during the Term. As part of such arrangement, it is expected that the following fees will continue to be collected and processed by ComEd: monthly payments, late payments, delivery charges and monthly service fee.
- c. **Data.** Supplier shall maintain a comprehensive and confidential database recording historical account information for Member accounts that has been provided to Supplier by ComEd, and maintain a current list of Members, and accounts that have opted-out of the Aggregation Program.
- d. **Title.** Title to and risk of loss for the electricity sold to Members shall pass to the purchasing Member upon delivery at the Delivery Point;

#### **2. Supply Mix.** Supplier shall be capable of providing the following energy supply mix to Members:

[To be determined as part of the Bid Process.]

#### **3. Delivery Specifications**

- a. **Quality and Measurement.** Supplier warrants that all electricity sold and delivered shall be of the specifications required by PJM and ComEd and suitable for delivery to and use by the Members.
- b. **Title.** Supplier warrants that it possesses or will possess good marketable title to all electricity sold to the Members, and that such electricity is free from all liens and adverse claims up to the Delivery Point.

- c. **Delivery.** Supplier shall deliver all electricity supplied to Members at the Delivery Point to secure delivery to the Members.

**B. Program Implementation.**

- 1. **Member Service.** Supplier shall maintain certain minimum levels of customer service including:
  - a. **Program Management and Documentation.** Supplier program management and documentation shall be in accordance with 1) this Agreement and its addenda; 2) the City's Plan of Operation and Governance; and 3) the Supplier's response to the City's Request for Qualifications.
  - b. **Confidentiality.** Supplier shall maintain the confidentiality of customer information pursuant to Article 10 of this Agreement and as required by law.
  - c. **Customer Service.** Supplier shall assist Members with their inquiries. Concerns regarding service reliability should be directed to ComEd, billing questions should be directed to ComEd or the Supplier, as applicable, and any unresolved disputes should be directed to the ICC. Inquiries from Members should be managed within the following performance parameters:
    - i. **Telephone Inquiries.** Supplier shall maintain a toll-free telephone access line which shall be available to Members 24 hours a day, seven days a week. Trained company representatives shall be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to by a trained company representative on the next business day. Under normal operating conditions, telephone answer times by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.
    - ii. **Internet and Electronic Mail.** Supplier shall establish and maintain a website for the Members. The website shall provide basic information concerning the Aggregation Program and facilitate customer inquiries by providing a platform for the submission of questions by email or text. Responses to inquiries submitted through the website platform be generated within 24 hours.

- iii. **Multi-Lingual Services.** Supplier shall provide customer service for Members requiring non-English verbal and written assistance.
  - iv. **Hearing Impaired.** Supplier shall provide customer service for hearing impaired Members.
2. **Enrollments.** Supplier shall perform the following Aggregation account enrollment tasks:
- a. **Opt-Out Period.** The Supplier shall conduct an initial Opt-Out Period, which shall be a fourteen-day period during which eligible residents and small commercial retail customers may opt out of the Aggregation Program prior to enrollment. After the initial Opt-Out Period has expired, the Supplier may at its option conduct one additional Opt-Out Period in September to enroll new residents who have not previously opted-out.
  - b. **Opt-Out Notifications.** Supplier shall manage the Opt-Out Period Notification process under the supervision of the City and the Consultant, in accordance with the Plan of Operation and Governance. A single database shall track account enrollment and billing data.
  - c. **New Accounts.** Supplier shall facilitate the addition of new customer accounts to the Aggregation Program during the term of this Agreement. Members wishing to opt in to the Aggregation Program may contact the ARES to obtain enrollment information. The ARES will make every effort to provide new customers with the same pricing available to initial enrollees; however, such pricing cannot be guaranteed. The ARES shall clearly state the rate to be charged for new accounts prior to enrollment.
  - d. **Re-Joining the Aggregation Group.** Supplier shall assist Members that have Opted-Out to rejoin at a later date. Eligible customers may rejoin the Program at a later date in the same manner as new residents moving into the City. These Members may contact the ARES at any time to obtain enrollment information.
  - e. **Moving Within the City.** Supplier shall continue service at the same rate and under the same terms and conditions for any Member who relocates within the City prior to the expiration of the term of this Agreement, providing that the Member notifies the Supplier of its desire to do so with 30 days notice. The Supplier shall be responsible for providing notice to customers about this option.
  - f. **Credit/Deposit Requirements.** Collection and credit procedures are to be the responsibility of ComEd and the individual Member. Members will be required to comply with the payment terms of ComEd. The City is not responsible for late payment or non-payment of any Member account. Neither the City nor the Supplier shall have a separate credit or deposit policy concerning Member accounts.

- g. **Reliability of Power Supply.** The Parties acknowledge that the Program only affects pricing for the power supply up to the Delivery Point. 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. Member 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,” meaning that should the Supplier fail for any reason to deliver any or all of the electricity needed to serve the Members’ needs, ComEd will immediately provide any supplemental electricity to the Members as may be required. ComEd would then bill the Supplier for the power provided on their behalf, and the Members would incur no additional cost therefore.
- h. **Fees Imposition.** Neither the City nor Supplier shall impose any conditions, terms, fees, or charges on any Member served by the Program unless the particular term, condition, fee, or charge, or the possibility of a change in the same, is clearly disclosed to the Member at the time the Members chose not to opt-out of the Program.
- i. **Enrollment and Disenrollment Charges.** Supplier shall not assess any early termination, enrollment, switching, or relocation fees on Members. The Supplier shall pay, on behalf of each Aggregation Member, any switching fee imposed by the Electric Utility related to the enrollment of a Member in the Program.
- j. **Form Documents.** Examples of Opt-Out letters and communications are provided in Exhibit C to this Agreement.

**C. Program Monitoring.** Supplier is responsible for the faithful performance of this Agreement and shall have internal monitoring procedures and processes to ensure compliance, as more fully described in this Section 5.C.

- 1. **Reporting** Supplier shall assist the City in developing a performance scorecard with conditions, milestones, requirements, or timetables related to Supplier’s performance under the Program. The scorecard may additionally record matters related to price, service, quality and other factors deemed important.
- 2. **Cooperation.** Supplier shall cooperate with the City in monitoring and tracking Program activity. This may require Supplier to report progress, problems and proposed resolutions, performance records, allow random inspections of its facilities (on no less than 48 hours prior written notice), participate in scheduled meetings and provide management reports, all as reasonably requested by the City.

**D. Cooperation at the Conclusion of the Aggregation.** Supplier agrees that it shall cooperate with the City in the City's planning and implementation of an aggregation plan that may succeed the Program under this Agreement. In its cooperation, Supplier shall, at a minimum, in a manner consistent with the then-applicable ComEd Illinois tariff for Government Aggregation Protocols and as required by law, provide the City the names and addresses and account information for Members in electronic format.

**E. Fixed Price.** The Price for the Services is set forth in Exhibit A.

**[INSERT based upon pricing proposal accepted by the City during Bid Process]**

**F. Reimbursement of City Costs.** Within 90 days after the Effective Date of this Agreement, Supplier shall reimburse the City [TO BE DETERMINED] for professional, legal, Consultant, and administrative costs incurred by the City in connection with the adoption of the Aggregation Program and the negotiation and execution of this Agreement. Additionally, Within 90 days after the Effective Date of this Agreement, Supplier shall reimburse the City [TO BE DETERMINED, AS APPROPRIATE] to support clean energy and energy efficiency programs to be developed and implemented by the City.

#### **ARTICLE 6: REMEDIES AND TERMINATION**

**A. Remedies.** In addition to every other right or remedy provided to the City under this Agreement, if the Supplier fails to comply with any of the provisions of this Agreement (for reason other than an order, rule, or regulations of a governmental agency or court having jurisdiction over the Supplier and this Agreement), then the City may give notice to the Supplier specifying that failure.

- 1. Cure Period.** 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.
- 2. Failure to Cure.** 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 City, 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 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.

**B. Circumstance Leading to Termination.** This Agreement may be terminated early in the following circumstances:

- 1. **Non-Compliance.** If the Supplier fails to comply with any material term or condition of this Agreement, provided the failure continues beyond the Cure Period and written Notice of such failure is provided to the Supplier.

Material terms and conditions include but are not limited to:

- a. A breach of the confidentiality provisions in Article 10 of this Agreement;
  - b. Supplier's disqualification as an ARES due to a lapse or revocation of any required license or certification required to perform the obligations set forth herein; or
  - c. ComEd's termination of its relationship with the Supplier;
  - d. Any act or omission that constitutes a deception by affirmative statement or practice, or by omission, fraud, misrepresentation, or a bad faith practice, such as attempting to collect a charge other than the approved per kWh rates or other charges set forth in this Agreement or the Terms and Conditions with each Aggregation Member.
  - e. Billing in excess of the approved rates and charges;
  - f. Billing or attempting to collect any charge other than the approved kWh rates and contractually approved charges; or
  - g. Failure to perform at a minimum level of customer service required by the City.
- 2. **Failure to Schedule and Deliver.** The failure of Supplier to schedule electricity supply to ComEd for the Members, except as permitted under force majeure events.

**C. Termination Procedure.** The City will give written notice to the Supplier of the City's intent to terminate this Agreement ("**Termination Notice**"). The notice will set forth with specificity the nature of the noncompliance. The Supplier will have 30 calendar days after receipt of the notice to object in writing to termination, to state its reasons for that objection, and to propose a remedy for the circumstances. If the City has not received a response from the Supplier, or if the City does not agree with the Supplier's response or any remedy proposed by the Supplier, then the City will conduct a hearing on the proposed termination. The City will serve notice of that hearing on the Supplier at least 10 business days prior to the hearing,



specifying the time and place of the hearing and stating the City intent to terminate this Agreement.

1. **Hearing.** At the hearing, the Supplier will have the opportunity to state its position on the matter, present evidence, and question witnesses. Thereafter, the City will determine whether or not this Agreement will be terminated. The hearing must be public and held on record.
2. **Reimbursement.** The decision of the City must be in writing and delivered to the Supplier by certified mail. If the rights and privileges granted to the Supplier under this Agreement are terminated, then the Supplier, within 14 calendar days after the City's demand, must reimburse the City for all costs and expenses incurred by the City, including, without limitation, reasonable attorneys' fees, in connection with that termination of rights or with any other enforcement action undertaken by the City.

Upon termination for any reason, the ARES(s) shall, at the direction of the City, either (i) return Members and Associate Members to the ComEd Default Tariff Rate, or (ii) facilitate the transfer the Members' and Associate Members accounts to another ARES(s) selected by the City. Upon termination of a Power Services Supply Agreement, each affected Member and Associate Member will receive written notification from the City notifying them of the termination and the alternative supply arrangements the City has arranged.

**D. Force Majeure Events.** The Supplier shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Program), where such noncompliance or alleged defaults occurred or were caused by a "**Force Majeure Event**," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Supplier's ability to anticipate or control.

#### **ARTICLE 7: INDEMNIFICATION, INSURANCE, DISCLAIMER, AND LIMITATION OF LIABILITY**

**A. Indemnification.** The Supplier shall defend, indemnify and hold harmless the City, its officers, employees, agents, and attorneys, from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, directly resulting from the Supplier's provision of the Services to the City, except to the extent caused by the negligence of the City. This duty shall survive for all claims made or actions filed within one year following either the expiration or earlier termination of this Agreement. The City shall give the Supplier timely written notice of its obligation to indemnify and defend the City after the City'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 City. Nothing herein shall be construed to limit the Supplier's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

**B. 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 C to this Agreement. For good cause shown, the City Manager/Administrator, or his or her designee may request submission of copies of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the City Manager/Administrator, or his or her designee may impose in the exercise of his sole discretion. Such certificates and policies shall be in a form acceptable to the City and from companies with a general rating of A minus or better, and a financial size category of Class VIII 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 City. 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.

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

#### **ARTICLE 8: MISCELLANEOUS**

**A. Entire Agreement.** This Agreement, including all Exhibits, constitutes the entire Agreement and understanding between the Parties with respect to the Services, which are included herein. All prior written and verbal agreements and representations with respect to these Services are merged into and superseded by this agreement.

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

**C. 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 City. The Supplier must promptly deliver all Data to the City at the City'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. Upon expiration of the Agreement, Supplier shall provide City with an electronic copy of data defined in Article 5(1)(c) at no cost to the City.

**D. Assignment.** This Agreement shall not be transferred or assigned by either Party without the express authorization of the other Party, which shall not be unreasonably withheld, provided, however, that upon advance written notice to the City, Supplier may assign this Agreement to an Affiliate without the express authorization of the City, provided that Supplier remains liable for Supplier's obligations hereunder.

**E. Notices.** Any notices, requests or demands regarding the services provided under this Agreement and the Attachments 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, on the day of receipt; 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 CITY:

TO SUPPLIER:

**F. 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. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, that the City may have under Federal or state law unless such waiver is expressly stated herein.

**G. Applicable Law and Choice of Venue.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, without regard to principles of conflict of laws. 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, Chicago 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.

**H. Exhibits.** Exhibits A through C attached to this Agreement are, by this reference, incorporated into and made part of this Agreement.

**I. Controlling Provisions.** In the event of any inconsistency between the text of this Agreement and the terms of the Exhibits hereto, the text of the Exhibits shall control.

**J. 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.

**K. 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.

**L. 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 each Party

expressly warrants that it has the power and authority to enter into the provisions, terms, and conditions of this Agreement.

**M. Authority to Sign Agreement.** Supplier warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Supplier warrants to the City that he is authorized to execute this Agreement in the name of the Supplier.

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

**O. 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.

**P. Subcontractors.** Supplier agrees to employ only those subcontractors that it determines are reasonably necessary. Subcontractors shall be held to the same strict confidentiality standards applicable to the Supplier, and shall be required to otherwise comply with the requirements of this Agreement. The use of subcontractors whether approved or unapproved shall not relieve the Supplier from the duties, terms and conditions in this Agreement. For purposes of this Agreement, regional transmission organizations, independent system operators, local utilities, and renewable energy certificate counterparties are not considered subcontractors.

## **ARTICLE 9: REPRESENTATIONS AND WARRANTIES**

**A. Mutual Representations and Warranties.** Each Party represents and warrants to the other Party, as of the date of this Agreement, that:

- 1.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
- 2.** It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
- 3.** The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- 4.** It has reviewed and understands this Agreement and has independently assessed the merits of this Agreement;
- 5.** It shall comply with all federal, state, and local laws, regulations, licensing, and disclosure requirements.

6. It shall maintain the confidentiality of Members' account information, as required by 815 ILCS 505/2HH;

**B. Additional Representations by the Supplier.** The Supplier hereby further represents to City, as of the date of this Agreement, that:

1. Supplier shall hold any and all subcontractors to the Confidentiality provision set forth below;
2. Supplier shall not compensate the Consultant with respect to the award of this Agreement or the performance of this Agreement;
3. Supplier shall obtain and maintain, for the duration of this Agreement, such proof of insurance as the City of Chicago deem necessary;
4. Supplier shall deliver or cause to be delivered all electricity supplied by Supplier to each Member to the appropriate node locations to effect delivery to the Delivery Point; and
5. Supplier shall maintain all of the qualifications, certifications, approvals, and other authorizations required by law to provide the Services pursuant to this Agreement.

#### **ARTICLE 10: CONFIDENTIALITY**

Supplier shall preserve the confidentiality of the account information it receives as a result of the performance of its obligations set forth herein.

**A.** Supplier shall not disclose, use, sell or provide customer account information to any person, firm or entity for a purpose outside of the operation of the Program. This provision shall survive the termination of this Agreement.

**B.** Notwithstanding the foregoing, Supplier may disclose confidential account information as required by law, and any such disclosure shall not be a violation of this Agreement. However, such disclosure shall not terminate the obligations of confidentiality.

**C.** Supplier agrees to give the City prompt notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any confidential account information.

**D.** To extent legally permissible and practicable, Supplier shall provide the City with sufficient advance notice as to give the City an opportunity, at the City's discretion and sole cost, to seek to quash the subpoena, obtain a protective order or similar relief.

**E.** In response to an order, subpoena, or other legal process, Supplier shall furnish only that portion of the confidential account information that is required or necessary in the opinion of Supplier's legal counsel. In addition, Supplier shall use reasonable efforts to obtain reasonable assurances that any account information so disclosed will be treated as confidential.

**F.** Notwithstanding the foregoing, nothing herein shall prevent the use by Supplier of such customer account information for the purpose of communicating with its customers or former

customers. In addition, nothing herein shall prevent Supplier from using information in the public domain prior to its disclosure under this Agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this agreement to be effective on the date first written above. The Parties agree that this Agreement may be executed in separate counterparts and delivered by facsimile, or as an attachment to an electronic message (such as a pdf, tif or other mutually acceptable type of file attachment), each of which when so executed and delivered shall constitute the one and the same original document.

**Supplier**

**City of Chicago:**

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

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

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

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

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

**EXHIBIT 1**

**CITY MUNICIPAL AGGREGATION SUPPLY PRICING CONFIRMATION**

<b>CONFIRMATION</b>	
<p>This Confirmation, once fully executed, is an agreement entered into pursuant to the terms of the Aggregation Program Agreement between <b>Supplier</b> and the <b>City</b> (the "City of Chicago "), and forms a part thereof.</p>	
<p><b>Supplier and City of Chicago agree that the Members shall receive the Fixed Price set forth below for the Delivery Period set forth below for their Full Electricity Requirements:</b></p>	
<p><b>Delivery Period:</b></p>	
<p><b>Fixed Price: \$            per kWh</b></p>	
<p>The Price does not include ComEd distribution charges or applicable taxes. Both Parties recognize that components of the Fixed Price include electric tariff charges that are authorized by the Illinois Commerce Commission, PJM, other state or governmental agencies having jurisdiction, and/or the Federal Energy Regulatory Commission. Any increase in these charges subsequent to the execution of this Confirmation may be directly passed through to Members by a corresponding increase in the Fixed Price.</p>	
<p>REC obligations would also be inserted here</p>	
<p><b>City of Chicago :</b></p> <p>By: _____</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>	<p><b>Supplier:</b></p> <p>By: _____</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>

**EXHIBIT 2**  
**ENROLLMENT FORMS AND DOCUMENTATION**



### EXHIBIT 3

#### CITY STANDARD TERMS AND CONDITIONS

##### **INSPECTOR GENERAL.**

It is the duty of any bidder, Respondent or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, Respondent, Contractor, Subcontractor or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to Chapters 2-56 or 2-55, respectively, of the Municipal Code of Chicago. Contractor understands and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code of Chicago. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

##### **BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS.**

Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code of Chicago.

Section 2-156-080 defines a “**business relationship**” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A “contractual or other private business dealing” shall not include any employment relationship of an official’s spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

## CHICAGO "LIVING WAGE" ORDINANCE

A. Section 2-92-610 of the Municipal Code of Chicago provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- (i) If Contractor has 25 or more full-time employees, and
- (ii) If at any time during the performance of this Agreement, Contractor and/or any Subcontractor or any other entity that provides any portion of the Electricity Aggregation Supply Services uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
- (iii) Contractor must pay its Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for Electricity Aggregation Supply Services provided under this Agreement.

B. Contractor's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

C. As of July 1, 2011, the Base Wage became \$11.18, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for electric services provided under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Contractor and all other Performing Parties must pay the prevailing wage rates.

D. Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Contractor agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Contractor or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Contractor and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

E. Not-for-Profit Corporations: If Contractor is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of Sections (a) through (d) above do not apply.

#### **WARRANTIES AND REPRESENTATIONS.**

In connection with signing and carrying out this Agreement, Contractor:

A. warrants that Contractor is appropriately licensed under Illinois law to provide the electric services required under this Agreement and will provide no electric services for which a professional license is required by law and for which Contractor is not appropriately licensed;

B. represents that Contractor and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and

C. acknowledges that Contractor and its Subcontractors understand and will abide by all provisions of Chapter 2-26-010 et seq. of the Municipal Code.

#### **ETHICS.** Contractor warrants:

A. no officer, agent or employee of the City is employed by Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under the Municipal Code of Chicago (Chapter 2-156).

B. no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to the prime Contractor or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

C. contractor acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

#### **RIGHT TO OFFSET.**

In connection with Section 2-92-380 of the Municipal Code of Chicago:

A. In accordance with Section 2-92-380 of the Municipal Code of Chicago and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Contractor to the City. For purposes of this Provision 24, “**outstanding parking violation complaint**” means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook

County within the time specified on the complaint. **“Debt”** means a specified sum of money owed to the City for which the period granted for payment has expired.

B. Notwithstanding the provisions of subsection A. above, no such debt(s) or outstanding parking violation complaint(s) will be offset from the price or compensation due under this Agreement if one or more of the following conditions are met:

- (a) Contractor has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and/or debts owed to the City and Contractor is in compliance with the agreement; or
- (b) Contractor is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
- (c) Contractor has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

#### **INSURANCE.**

[TO BE DETERMINED]

#### **DISCLOSURES.**

Contractor must execute and must cause any Subcontractors to execute an Economic Disclosure Statement and Affidavit (“EDS”) in the form attached to the RFQ as Exhibit E. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Contractor agrees that Contractor’s failure to maintain current throughout the term and any extensions of the term, the disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, shall constitute an event of default.

#### **COMPLIANCE WITH ALL LAWS**

A. Compliance with All Laws Generally. Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this section, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also.

Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law;

and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

B. Nondiscrimination. Contractor in performing its services under this Agreement, Contractor must comply with applicable laws prohibiting discrimination against individuals and groups.

- (a) Federal Requirements. In performing its services under this Agreement, Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Contractor must comply with, and the procedures Contractor utilizes and the services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; 41 C.F.R. Part 60 et seq. (1990); and all other applicable federal statutes, regulations and other laws.

- (b) State Requirements. Contractor must comply with, and the procedures Contractor utilizes and the services Contractor provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 111. Admin. Code § 750 Appendix A. Furthermore, Contractor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and all other applicable state statutes, regulations and other laws.
- (c) City Requirements. Contractor must comply with, and the procedures Contractor utilizes and the services Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 et seq. of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

- (d) Subcontractors. Contractor must incorporate all of this provision by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement.

**PROHIBITION ON CERTAIN CONTRIBUTIONS.**

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable, regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Contract resulting from this specification, the CPO may reject Contractor's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

### **ENVIRONMENTAL WARRANTIES AND REPRESENTATIONS.**

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This section does not limit Contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect Contractor's eligibility for future contract awards.

**FIRMS OWNED OR OPERATED BY INDIVIDUALS WITH DISABILITIES.**

The City encourages contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

**CONTRACTOR’S CERTIFICATION REGARDING FEDERAL LISTS.**

Contractor certifies that neither Contractor nor any Affiliate of Contractor appears on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

A. “Affiliate” for purposes of this Section means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**GOVERNING LAW AND JURISDICTION.**

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois. Contractor irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Contractor, or by personal delivery on any officer, director, or managing or general agent of Contractor. If any action is brought by Contractor against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

**SHAKMAN ACCORD**

A. The City is subject to the May 31, 2007 Order entitled “Agreed Settlement Order and Accord” (the “Shakman Accord”) and the June 24, 2011 “City of Chicago Hiring Plan” (the “City Hiring Plan”) entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

B. Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor,



and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Contract are employees or subcontractors of Contractor, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

C. Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Contract, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

D. In the event of any communication to Contractor by a City employee or City official in violation of Section (ii) above, or advocating a violation of Section (iii) above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Contract. Supplier must also cooperate with any inquiries by the IGO hiring Oversight or the Shakman Monitor's Office related to this Agreement.

**INSURANCE.**

[TO BE DETERMINED]

**EXHIBIT 4**  
**INSURANCE REQUIREMENTS**

[TO BE DETERMINED]