

**REVISED REQUEST FOR PRICING (RFP) 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 Revised RFP distributed by:

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

All Pricing Forms 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

**ALL RESPONSES MUST BE RECEIVED BY 12:00PM CENTRAL TIME ON
DECEMBER 7, 2012**

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

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

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

Table of Contents

<u>SECTION 1 – INTRODUCTION.....</u>	<u>2</u>
<u>SECTION 2 – QUALIFICATION SUBMITTAL FORMAT & CONTENTS.</u>	<u>4</u>
<u>SECTION 3 - EVALUATING PRICING PROPOSALS.....</u>	<u>5</u>
<u>SECTION 4 - CONFIDENTIALITY</u>	<u>5</u>
<u>SECTION 5 - SPECIFICATIONS.....</u>	<u>6</u>

ATTACHMENTS

Attachment 1	Vendor Margin Pricing Forms
Attachment 2	Indicative Pricing Forms
Attachment 3	Draft Plan of Operations and Governance
Attachment 4	Draft Agreement

**CITY OF CHICAGO
REVISED REQUEST FOR PROPOSALS
ELECTRICITY AGGREGATION SUPPLY SERVICES
RFP No. 112257**

The City of Chicago (the City), Illinois acting by and through its Department Fleet and Facility Management, in conjunction with the Department of Procurement Services, has identified Qualified Respondents to its Request for Qualifications (RFQ) No. 112257, and now issues this Request for Pricing to those Qualified Respondents. Qualified Respondents may submit bids in response to this RFP. Bidder(s) with the lowest Margin offer(s) will be awarded a contract for electricity aggregation supply services as described herein.

Qualified Respondents must certify that they will meet and maintain all applicable requirements as outlined in RFQ 112257 and its attachments. Qualified Respondents must certify that they will meet and maintain all standards and commitments as submitted in their responses to RFQ 112257.

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

Qualified Respondents wishing to submit pricing proposals must submit responses that meet the requirements specified herein, by no later than December 7, 2012, 2012 at 12:00 pm 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 RFP 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 RFP 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 RFP materials. If Respondent chooses to download and print the RFP document, the Respondent must contact the City of Chicago, Department of Procurement Services, Bid & Bond Room by emailing BidandBond@cityofchicago.org referencing Specification No. 11257 to register

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

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 was held on November 6, 2012. It is expected that on December 12, 2012, the Chicago City Council will consider an ordinance that will approve the Plan and, 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."

The City has established a pool of Qualified Bidders through a Request for Qualifications (RFQ). At this time, the City seeks pricing proposals from Qualified Bidders. Pricing proposals will be structured as margin pricing. Margin pricing is a \$/kWh fee added to the Full Commodity Price for full-requirements electricity supply to Program Members and Associate Members, and will represent the total compensation the Respondent will receive for providing the services under the Agreement.

B. TERMS AND SCOPE OF SERVICES

In its bid, Respondent must certify that it accepts the terms and conditions of the attached Draft Agreement (Attachment 4). (Note, the Draft Agreement is subject to approval by the City Council. However, Respondent shall not alter, amend, or modify the Draft Agreement in any way).

C. SUBMISSION OF MATERIALS AND SCHEDULE

- 1. Submittal Delivery.** Respondents submitting bids under this RFP 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 by email 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
Request for Pricing (RFP)	
1. City issues RFP	December 5, 2012
2. Bid Due Date	December 7, 2012
3. Supplier(s) selected	December 7, 2012
4. City passes Ordinance(s) to:	December 12, 2012
a. Adopt Plan of Operations and Governance	
b. Establish the Chicago Electricity Aggregation	
c. Assign Agreement execution authority to the Mayor or his Designee	
5. Agreement with Supplier(s) executed	December 12, 2012
6. City accepts commodity pricing	December, 2012
7. Account enrollment process commences	December, 2012

3. Additional Information. The City will not hold any Pre-Submittal Conferences or meetings

Respondents seeking responses to questions or comments 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

UNAUTHORIZED CONTACT REGARDING THIS REQUEST FOR PRICING WITH ANY OTHER CITY OF CHICAGO EMPLOYEES MAY RESULT IN DISQUALIFICATION.

All materials and information submitted in response to this RFP will become the property of the City. Materials may not be changed, amended, or modified after the margin pricing submittal date. However, a submittal submitted prior to the qualifications submission date, may be withdrawn and resubmitted any time prior to December 7, 2012 at 12:00 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 and approved by the City.

The City reserves the right to terminate this RFP for any reason at any stage of this RFP 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 RFP 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 RFP.

SECTION 2 – QUALIFICATION SUBMITTAL FORMAT & CONTENTS

The Pricing Proposal 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. Respondents will not have an opportunity to submit additional information at a later date.

A. VENDOR CERTIFICATIONS

Certification Letter. The Certification letter shall be on the Respondent’s letterhead. The Certification Letter must contain a commitment to provide the services described in the RFQ No. 112257 and its Addenda 1 through 4; a commitment to meet the terms of the current Draft Plan of Operations and Governance (Attachment 3); a commitment to fulfill the offers and standards as presented in the Respondent’s submittal to the RFQ No. 112257; a commitment to observe all applicable laws and regulations of the State of Illinois and the City of Chicago; and a confirmation that the Respondent accepts the terms and conditions of the attached Draft Agreement (Attachment 4). (Note, the Draft Agreement is subject to approval by the City Council. However, Respondent shall not alter, amend, or modify the Draft Agreement in any way).

The certification letter must include name, signature, title, address and telephone number of the person authorized to submit and sign the Submittal. The certification letter must certify that there have been no material changes to the information provided as part of Respondent’s response to RFQ No. 112257 and its Addenda 1 through 4.

B. VENDOR MARGIN PRICING FORMS

- 1. Provided Forms.** Vendor Margin Pricing Forms (provided in Attachment 1) must be completed and included in the submittal.
 - a. Required Pricing Submittal Form A: City of Chicago Municipal Pricing Proposal Form Full-Requirements Supply Needs of 100% of City of Chicago Aggregation Program Accounts; and
 - b. Optional Pricing Submittal Form B: City of Chicago Municipal Pricing Proposal Form Full-Requirements Supply Needs of 50% of City of Chicago Aggregation Program Accounts.

C. INDICATIVE PRICING FORMS

Provided Forms. Indicative Pricing Forms (provided in Attachment 2) must be completed and included in the Submittal. Respondents are required to provide indicative pricing based on market closing prices for Thursday December 6, 2012. The City will review indicative pricing forms to confirm that respondents are properly assigning market pricing elements as appropriate pass-through costs Vendor margin is the only revenue attributable to the Respondent.

- a. **Required.** Indicative Pricing Submittal Form A: Indicative Pricing through May 2014; and
- b. **Required.** Indicative Pricing Submittal Form B: Indicative Pricing through May 2015.

SECTION 3 - EVALUATING PRICING PROPOSALS

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 pricing 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 submittal received.

The City reserves the right to seek clarification of any information that is submitted by any Respondent in any portion of its pricing 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.

B. SELECTION PROCESS

The Evaluation Committee will make a selection of a Supplier or Suppliers based on the lowest total margin price submitted by the supply mix scenario and term scenario selected by the City. Pricing submittals must conform to the pricing structure outlined in the Pricing Submittal Forms which instruct respondents to provide margin pricing as a \$/kWh fee added to the Full Commodity Price for full-requirements electricity supply to Program Members and Associate Members, and will represent the total compensation the Respondent will receive for providing the services identified in the Agreement.

SECTION 4 – PUBLICATION OF PORTIONS OF PRICING PROPOSALS

Please note, upon selection of a winner or winners, the City intends to make public the completed Vendor Margin Pricing Forms (Attachment 1) and the total indicative price contained in the submitted Indicative Pricing Form (Attachment 2) for all qualified bidders that respond to this RFP.

SECTION 5 - CONFIDENTIALITY

Respondents may designate those portions of its pricing submittal that 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. To the extent that Bidders mark items in their bids as "Confidential and Proprietary Data" under subsection B of this section, the City shall, in response to a Freedom of Information request, determine whether such items are confidential or proprietary data and whether disclosure of the information would result in competitive harm in determining whether the marked items are exempt from disclosure.

SECTION 6 - SPECIFICATIONS

A. RFQ No. 112257

All inclusions and addenda to RFQ No. 112257 apply as specifications to this RFP.

B. PLAN OF OPERATIONS AND GOVERNANCE

Attached hereto, as Attachment 3, is the Draft Plan . Note, the Draft Plan is subject to approval by the Chicago City Council.

C. AGREEMENT

Attached hereto, as Attachment 4 is the Draft Agreement. Note, the Draft Agreement is subject to approval by the City Council. However, Respondent shall not alter, amend, or modify the Draft Agreement in any way.

D. MULTIPLE SUPPLIER SCENARIOS

This RFP contemplates selecting as many as two (2) separate suppliers. In the event that multiple suppliers are selected through this RFP, the City will assign 50% of the Program's accounts to each winning bidder. During the course of the Program, the City will assign new accounts in a manner so as to maintain, as closely as possible, the 50% account allocation.

In determining the relative cost associated with multiple supplier selection, the City will consider the added internal management costs associated with such an arrangement as well as the potential for lost consumer savings due to delayed program implementation.

Bidders may provide pricing submittals for either or both supplier scenarios (single or multiple) at their own discretion.

ATTACHMENT 1

Pricing Submittal Form A - City of Chicago Municipal Pricing Proposal Form

Full-Requirements Supply Needs of 100% of

City of Chicago Aggregation Program Accounts

Bidder Name: _____ ***Authorized By:*** _____

Phone: _____ ***Authorized By (Printed):*** _____

Fax: _____ ***Date and Time:*** _____

Email: _____

BIDDER AGREES TO PROVIDE ITS PROPOSED PRICES TO THE CITY OF CHICAGO MUNICIPAL AGGREGATION PROGRAM.

Electricity Supply Proposals: Bidders are to indicate the complete fee (i.e. Margin) they agree to as their compensation under the Aggregation Supply Agreement to supply 100% of the Chicago Electricity Aggregation Program.

Option	Description	Bidder Margin (\$/kWh) Through May 2014	Bidder Margin (\$/kWh) Through May 2015
0% Coal inclusion	<i>Bidder provides a fixed margin (\$/kWh) to provide full-requirements supply to the City of Chicago municipal aggregation Members that relies on a fuel mix that contains 0% coal-based generation.</i>		
No more than 10% Coal inclusion	<i>Bidder provides a fixed margin (\$/kWh) to provide full-requirements supply to the City of Chicago municipal aggregation Members that relies on a fuel mix that contains no more than 10% coal-based generation.</i>		
No more than 20% Coal inclusion	<i>Bidder provides a fixed margin (\$/kWh) to provide full-requirements supply to the City of Chicago municipal aggregation Members that relies on a fuel mix that contains 20% coal-based generation.</i>		

**Full-Requirements Supply Needs of 50% of
City of Chicago Aggregation Program Accounts**

Bidder Name: _____ **Authorized By:** _____

Phone: _____ **Authorized By (Printed):** _____

Fax: _____ **Date and Time:** _____

Email: _____

BIDDER AGREES TO PROVIDE ITS PROPOSED PRICES TO THE CITY OF CHICAGO MUNICIPAL AGGREGATION PROGRAM.

Electricity Supply Proposals: Bidders are to indicate the complete fee (i.e. Margin) they agree to as their compensation under the Aggregation Supply Agreement to supply a maximum of 50% of the Chicago Electricity Aggregation Program.

Option	Description	Bidder Margin (\$/kWh) Through May 2014	Bidder Margin (\$/kWh) Through May 2015
0% Coal inclusion	<i>Bidder provides a fixed margin (\$/kWh) to provide full-requirements supply to the City of Chicago municipal aggregation Members that relies on a fuel mix that contains 0% coal-based generation.</i>		
No more than 10% Coal inclusion	<i>Bidder provides a fixed margin (\$/kWh) to provide full-requirements supply to the City of Chicago municipal aggregation Members that relies on a fuel mix that contains no more than 10% coal-based generation.</i>		
No more than 20% Coal inclusion	<i>Bidder provides a fixed margin (\$/kWh) to provide full-requirements supply to the City of Chicago municipal aggregation Members that relies on a fuel mix that contains 20% coal-based generation.</i>		

ATTACHMENT 2

Indicative Pricing Submittal Forms

Bidder Name: _____ **Authorized By:** _____

Phone: _____ **Authorized By (Printed):** _____

Fax: _____ **Date and Time:** _____

Email: _____

INSTRUCTIONS: *Using the Indicative Pricing Forms A and B on the next two pages, please provide a detailed breakout of the supply costs associated with providing the Chicago Electric Aggregation Program with full-requirements electricity supply for periods extending through May 2014 and May 2015. For purposes of this activity, please provide indicative pricing for a supply portfolio that meets the minimum requirements of the Illinois Renewable Portfolio Standard and no restrictions on the fuel content of the portfolio.*

We require that Respondents provide cost breakouts in the categories required. Respondents may attach clarifications to their bid responses.

Indicative Pricing Submittal Form A: Indicative Pricing through May 2014

Indicative Pricing Form A: Full Requirements Supply through May 2014	
Cost Element	Indicative Price (\$/kWh)
Energy Supply – Peak and Off-Peak energy plus any shaping premium, plus any load following Premiums.	
Transmission Service Charges - Charges that recover the costs of using the transmission system, including the costs for services necessary for the reliable operation of the transmission system.	
PJM Auction Revenue Rights - Entitlement allocated annually to Firm Transmission Service Customers that entitle the holder to receive an allocation of revenues or charges from the Annual Firm Transmission Rights auction.	
PJM Marginal Losses - Credits that are calculated as total net energy charges plus total net marginal loss charges.	
Ancillary Services - Any additional charges from PJM that are not included in the Transmission Service Charge.	
Capacity - Any charges associated with meeting the capacity requirements for delivering energy through PJM.	
Distribution Losses - Energy losses attributable to the distribution system.	
Purchase of Receivables – Charges associated with the ComEd Purchase of Receivables offering.	
Utility Consolidated Billing – Charges associated with providing Members with ComEd-issued monthly utility bills.	
Renewable Portfolio Standard - Charges associated with fulfilling renewable energy obligations including Alternative Compliance Payments to the ICC.	
Vendor Margin – Fee charged by Bidder to facilitate program management and energy delivery.	
TOTAL	

Indicative Pricing Submittal Form B: Indicative Pricing through May 2015

Indicative Pricing Form B: Full Requirements Supply through May 2015	
Cost Element	Indicative Price (\$/kWh)
Energy Supply – Peak and Off-Peak energy plus any shaping premium, plus any load following Premiums.	
Transmission Service Charges - Charges that recover the costs of using the transmission system, including the costs for services necessary for the reliable operation of the transmission system.	
PJM Auction Revenue Rights - Entitlement allocated annually to Firm Transmission Service Customers that entitle the holder to receive an allocation of revenues or charges from the Annual Firm Transmission Rights auction.	
PJM Marginal Losses - Credits that are calculated as total net energy charges plus total net marginal loss charges.	
Ancillary Services - Any additional charges from PJM that are not included in the Transmission Service Charge.	
Capacity - Any charges associated with meeting the capacity requirements for delivering energy through PJM.	
Distribution Losses - Energy losses attributable to the distribution system.	
Purchase of receivables – Charges associated with the ComEd Purchase of Receivables offering.	
Utility Consolidated Billing – Charges associated with providing Members with ComEd-issued monthly utility bills.	
Renewable Portfolio Standard - Charges associated with fulfilling renewable energy obligations including Alternative Compliance Payments to the ICC.	
Vendor Margin – Fee charged by Bidder to facilitate program management and energy delivery.	
TOTAL	

Power Supply Agreement

By and Between

The City of Chicago and _____

This Power Supply Agreement (Agreement) is entered into as of this _____ day of _____ 2012 (Effective Date), 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 to participate; and

WHEREAS, the corporate authorities of the City have approved the placement of a referendum on the ballot for the November 6, 2012 general election regarding the establishment of an “opt-out” Aggregation Program pursuant to the Act; and

WHEREAS, the a Request for Pricing was issued on December 5, 2012; and

WHEREAS, Supplier is an ARES certified by the Illinois Commerce Commission and was identified as providing the lowest margin price submitted by responsible bidders 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 an Agreement 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. **ComEd** - The Commonwealth Edison Company
- H. **Default Tariff Service** - The applicable tariff services provided by the Electric Utility as required by 220 ILCS 5/16-103 at the rates established in ComEd's "Price to Compare" for the applicable rate class, as posted on the ICC website, which includes ComEd's electricity supply charge plus ComEd's transmission services charge, but does not include ComEd's purchased electricity adjustment.
- I. **Delivery Point** – The Commonwealth Edison Company.

- J. **Designee** - The person (or persons) empowered by the Chicago City Council through Ordinance to authorize and execute a contract price for electricity supply on behalf of the Electricity Aggregation Program.
- K. **Electricity Supply** - The electricity commodity plus necessary capacity, transmission, distribution, and ancillary services provided to Program Members.
- L. **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).
- M. **Extended Term** - Defined in Section 3.A of this Agreement.
- N. **Fixed Price** – A non-variable 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.
- O. **Force Majeure Event** - Defined in Section 6.C of this Agreement.
- P. **Full Commodity Price** – The all-inclusive unit price (\$/metered kWh volume) associated with delivering electricity to the Delivery Point. Such costs include, but are not limited to: Energy (the cost of purchasing blocks of peak and off-peak energy, plus any shaping premium, plus any load following premiums), Distribution Losses (energy losses attributable to the distribution system), Ancillary Services (any additional charges from PJM that are not included in the Transmission Service Charge), Capacity (any charges associated with meeting the capacity requirements for delivering energy through PJM), Transmission Service Charge (charges that recover the costs of using the transmission system, including the costs for services necessary for the reliable operation of the transmission system), PJM Auction Revenue Rights (entitlement allocated annually to Firm Transmission Service Customers that entitle the holder to receive an allocation of revenues or charges from the Annual Firm Transmission Rights auction), PJM Marginal Losses (credits that are calculated as total net energy charges plus total net marginal loss charges) Renewable Portfolio Standard (charges associated with fulfilling renewable energy obligations including Alternative Compliance Payments to the ICC), Purchase of Receivables/Utility Consolidated Billing (charges associated with participating in these ComEd billing programs),
- Q. **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 and Associate 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.
- R. **Member** - An Eligible Retail Customer enrolled in the City’s Program.
- S. **Opt-Out** - The process by which a Member who would be included in the Aggregation Program chooses not to participate in the Aggregation Program.
- T. **Price to Compare** - The unit price for ComEd electricity supply services for each customer class 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.

- U. 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 Agreement.
- V. 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.
- W. 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.
- X. Plan** - The Aggregation Plan of Operation and Governance adopted by the Chicago City Council pursuant to the requirements set forth in Section 1-92 of the Act.
- Y. REC** - Renewable Energy Credits.
- Z. Regulatory Event** - Defined in Section 6.B of this Agreement.
- AA. Services** – Defined in Article 5 of this Agreement.
- BB. Small Commercial** – Non-residential retail customers with an annual consumption of less than 15,000 kWh per 220 ILCS 5/16-102.
- CC. Term** – Defined in Section 3.A of this Agreement.

ARTICLE 3: TERM

- A. Term of Agreement.** This Agreement commences on the Effective Date, provided however, the supply service to Members shall not commence until ComEd’s confirmation of member enrollment with the Supplier and shall continue for [TO BE DETERMINED] billing cycles. If during the term of this Agreement, 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. Additionally, any pass-through costs, such as administrative reimbursements to the City, program costs, and assigned or bilateral agreements the program operations plan shall be disregarded for purposes of comparing the Fixed Price and the Price to Compare.
- B. End of Term.** This 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. Such Extended Term must be approved by the Chicago City Council. 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 and the Supplier mutually agree to allow the Supplier 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 and the Supplier mutually agree to allow the Supplier 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 and (b) that that it would like to select another Supplier after such expiration, 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 Operation and 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 and included in Exhibit 5 to this Agreement. If there is any discrepancy between (a) the Plan of Operation and Governance, and (b) this Agreement, the terms of this Agreement shall prevail.

4. Timely Enrollment. The Supplier shall provide the City with a detailed schedule and task description report identifying the measures to be taken to ensure timely enrollment of Member accounts within 2 days of the execution of this Agreement. The Supplier shall be obligated to paying reimbursements to Members for delays in enrollment that are due to the Suppliers' failure to meet agreed-to performance milestones identified in the schedule. Reimbursements will be calculated as the difference between the Fixed Price and the Price to Compare multiplied by the number of kWh billed during each monthly billing cycle that the Member remains on the ComEd Default beyond the targeted enrollment date.

5. Electricity Supply and Services. The Supplier shall supply the Full Electricity Requirements for the Program Members. In addition to securing and delivering electricity to the Delivery Point, the Supplier shall also meet the following requirements:

- a. **Renewable Portfolio Standard.** The Supplier shall meet requirements of the Illinois Renewable Portfolio Standard. The Supplier shall facilitate securing volumes of renewable energy resources that exceed the current renewable energy resource requirements of the RPS at the request of the City. The Supplier shall treat the costs of such excess renewable energy resources as pass-through expenses without additional markup beyond the terms allowed in the Agreement.
- b. **Bilateral Contracts.** Supplier shall facilitate including specific bilateral contracts with entities identified by the City for Electricity Supply and services. The Supplier shall treat such bilateral contracts as pass-through expenses without additional markup to the Members and Associate Members beyond the terms allowed in the Agreement.

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 and Associate 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 agrees that all electricity sold shall be delivered in accordance with applicable PJM and ComEd rules and tariffs 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 Associate 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 as found in Exhibit 5; and 3) the Supplier's response to the City's Request for Qualifications as found in Exhibit 6.
 - b. **Confidentiality.** Supplier shall maintain the confidentiality of customer information pursuant to the terms of this Agreement and as required by law.
 - c. **Customer Service.** Supplier shall assist Members and Associate 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 and Associate 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 and Associate 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 shall be generated within 24 hours.
- iii. **Multi-Lingual Services.** Supplier shall provide customer service for Members and Associate Members requiring non-English verbal and written assistance.
- iv. **Hearing Impaired.** Supplier shall provide customer service for hearing impaired Members and Associate Members.
- v. **Data Services.** Supplier shall provide Members and Associate Members with online access to their account's historical electricity consumption and costs; information concerning the opportunities and advantages for energy efficiency and distributed generation; and analytical tools to aid in establishing more efficient use of electricity.

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 residential and small commercial retail customers may opt out of the Aggregation Program prior to enrollment.
- 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 must facilitate the addition of new customer accounts to the Aggregation Program during the term of this Agreement. Members and Associate Members wishing to opt in to the Aggregation Program may contact the ARES to obtain enrollment information. The Supplier will provide new Eligible Retail Customers the same pricing available to initial enrollees. The Supplier shall clearly state the rate to be charged for new accounts prior to enrollment.
- d. **Re-Joining the Aggregation Group.** Supplier must assist Members that have Opted-Out to rejoin at a later date. Eligible Retail Customers may opt in to the Program at a later date in the same manner as new

accounts. These Members may contact the ARES at any time to obtain enrollment information, and shall receive the same Fixed Price as all other Members

- e. **Moving Within the City.** Supplier must 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 Members about this option, and shall provide such customers with the same pricing as all other Members
- f. **Credit/Deposit Requirements.** Collection and credit procedures are to be the responsibility of ComEd and the Member or Associate Member. Members and Associate 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 or Associate 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 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 or Associate 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' and Associate 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 and Associate Members would incur no additional cost therefore.
- h. **Fees Imposition.** Neither the City nor the Supplier shall impose any conditions, terms, fees, or charges on any Member or 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 or 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 reimburse Members for any switching fee imposed by

ComEd related to the enrollment of a Member into the Program within 30 days of receiving notice of such switching fee. The Supplier shall not be responsible to pay any switching fees imposed on Members who switch service from an alternative retail electric supplier.

- j. **Form Documents.** Examples of Opt-Out letters and communications are provided in Exhibit 2 to this Agreement.

C. Energy Efficiency, Renewable Energy, Distributed Generation, and Demand Response Programs. Supplier will work with the City to develop energy efficiency, renewable energy, distributed generation, and demand response assets. Energy efficiency, demand response and renewable energy assets shall be treated as alternative supply options and appear as supply sources in the final power sourcing arrangements negotiated between the City and the Supplier.

D. 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.

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.

E. Cooperation at the Conclusion of the Aggregation. Supplier agrees that it shall cooperate with the City in its 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.

F. Fixed Price. Supplier agrees that it shall provide to the City daily market price quotes to establish the Full Commodity Cost for the Agreement. The daily market price quotes will detail the line item costs of energy supply, capacity, transmission, ancillary services, and vendor margin available to the City that day. The daily market price quotes will be reviewed by the Consultant to establish that the individual pricing details are i) consistent with market prices and tariffs; and ii) consistent with contract terms. If the daily mark price quote is deemed acceptable by the Consultant, the Consultant will inform the City of the price and pricing components and recommend acceptance. If accepted, the City Designee will affirm acceptance of the commodity price verbally and in writing to the Supplier.

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

G. 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. The Supplier may treat such reimbursement expenses as pass-through expenses that are included in the Fixed Price.

ARTICLE 6: REMEDIES AND EVENTS OF DEFAULT

A. Events of Default Defined. The following constitute events of default:

1. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Supplier to the City.

2. Supplier's failure to perform any of its obligations under this agreement including the following:

- a. Failure to maintain a minimum level of customer service for Members. Minimum level of customer service requirements is defined as maintaining a minimum two-star rating as compiled by the Illinois Commerce Commission (the ICC). The ICC's ARES' customer complaint statistics can be found at <http://www.pluginillinois.org/complaints.aspx>.
- b. Demonstrating an inability to perform the services identified in this Agreement satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.
- c. Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, services that are rejected as erroneous or unsatisfactory;
- d. Discontinuance of the Services for reasons within the Supplier's reasonable control;
- e. Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination; and
- f. Any other acts specifically stated in this Agreement as constituting an act of default.

3. Any change in ownership or control of Supplier without the prior written notification of the City.

4. Supplier's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Supplier acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.

5. Supplier's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Chief Procurement Officer, it indicates a willful or reckless disregard for City laws and regulations.

B. Remedies. The occurrence of any event of default listed in section A above permits the City to declare the Supplier in default. In addition to every other right or remedy provided to the City under this Agreement, if the Supplier is declared in default or otherwise 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 or due to a force majeure or act beyond reasonable control of Supplier), then the City may give notice to the Supplier specifying that event of default or 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.

C. 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. Minimum level of customer service requirements is defined as maintaining a minimum two-star rating as compiled by the Illinois Commerce Commission (the ICC). The ICC's ARES' customer complaint statistics can be found at <http://www.pluginillinois.org/complaints.aspx>.

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 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 regulatory event or other event that is beyond the Supplier's control. In the event of the foregoing, the time periods for any obligations that Supplier must meet shall be extended for a period not to exceed the time lost be reason of the delay; provided that the Supplier must (i) use reasonable commercial efforts to mitigate or eliminate the cause of such delay or its effects and, (ii) if events in the nature of the force majeure event were foreseeable, have used commercially reasonable efforts prior to its occurrence to anticipate and avoid its occurrence or effect. Supplier must notify the City and Members in writing promptly of any failure or delay in, and the effect on, its performance. Notwithstanding the foregoing, Supplier shall be excused from its performance hereunder in the event of a strike, walkout, work stoppage or other labor dispute affecting its personnel, those of City or those of a third party.

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

1. **Illegality.** It becomes unlawful for a Party to perform any obligation under this Agreement due to the adoption of, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.
2. **Adverse Government Action.** A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially or adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determined to be unreasonable or (C) orders a change or modification that affect the Program such that either Party's obligations hereunder are materially changed (including the capacity market changes contemplated in FERC docket ER11-4081), and the charge is not deemed a Force Majeure Event.
3. **New Taxes/Legislative or Regulatory Charges.** Any new charges, tax or increases in such tax, or an application of such tax to a new or different class of parties, which is enacted or levied on the Supplier, not recoverable by Supplier from Members or Associate Members pursuant to Section 6 F below and effective after the Execution Date, except federal and state income taxes, employee taxes or other taxes assessed against the business of the Supplier or the delivery of services under this Agreement.
4. **Occurrence of Regulatory Event.** Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties shall enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly

as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to this Agreement, within the prescribed time after entering negotiations, the adversely affected Party shall have the right, upon ten (10) days prior written notice, to terminate this Agreement. Upon termination of this Agreement as a result of a Regulatory Event, the obligations of Supplier and each Aggregation Member set forth in the Terms and Conditions shall survive termination.

F. Additional Charges, Taxes, or Levies. In the event that the electric utility, the PJM or other applicable regional transmission organization, any transmission provider, or any unit of government takes action or inaction that results in the imposition of a generally applicable additional charge, tax, or levy upon the Supplier, and similarly situated suppliers, for the provision of Services, then Supplier will adjust the Price to reflect such additional charge, tax or levy by the following procedure: The Supplier shall provide written notice to the City and Members within 15 days after the occurrence of such action or inaction, of: (i) the nature of the action or inaction; (ii) the adjustment of the Price for the applicable Term and (iii) the date on which the price adjustment will become effective. Within 15 days after receipt of the notice, the City shall have the right to request a meeting with the Supplier to review the action or inaction, and the price adjustment, identified by the Supplier. The Supplier and the City shall meet within five business days after delivery of such request to the Supplier, and shall cooperate in good faith to resolve any dispute regarding the price adjustment. Provided that nothing herein shall prevent the price adjustment from becoming effective on Members' bills on the date notice was issued. The Supplier shall continue to provide the Services during any such negotiations, unless prohibited by law or regulation. This Section shall not apply to any fine or penalty assessed against the Supplier as a result of any failure by the Supplier to comply with applicable laws and regulations.

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 4 to this Agreement. For good cause shown, the City 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 may impose in the exercise of its 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: 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' and Associate 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 as detailed in Exhibit 4;
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.
6. Supplier shall not utilize data provided to the Supplier for the purposes of managing the Program to market electricity supply offers to eligible retail customers located within the City.
7. Supplier must maintain an investment-grade corporate debt rating as evidenced by one of the major investment rating agencies. Supplier may provide a letter of acknowledgement from its parent firm citing that the parent company supports the financial liabilities and obligations of the Supply.

ARTICLE 9: 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.

ARTICLE 10: 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 remains 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 1 through 6 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.

Q. MBE/WBE. Supplier agrees to adhere to the MBE-WBE compliance plan submitted in its response to the RFQ (Exhibit 6).

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

CONFIRMATION

This Confirmation, once fully executed, is an agreement entered into pursuant to the terms of the Aggregation Program Agreement between **Supplier** and the **City** (the "City of Chicago"), and forms a part thereof. A duly authorized representative of the City must affirm acceptance of the below Fixed Commodity Price quote by: a) verbally accepting the quote via telephone to Vendor at XXX-XXX-XXXX, and b) by affirming acceptance of the quote in writing by transmitting a fully executed copy of this Transaction Confirmation to: xxx@xxxx.com. Both verbal acceptance and written affirmation of acceptance of the terms of this Transaction Confirmation must be received by Vendor no later than 4 PM prevailing Central Time ("Daily Acceptance Deadline") on the Quote Date indicated below. Failure to do so shall cause the Fixed Total Price Quote for that Quote Day to lapse and to be of no binding effect.

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:

Delivery Period:

Fixed Price: \$ per kWh

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.

REC obligations would also be inserted here

City of Chicago :		Supplier:	
By: _____		By: _____	
Name:		Name:	
Title:		Title:	
Date:		Date:	

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.

See Exhibit 4.

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, and 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 Ill. 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.

See Exhibit 4.

EXHIBIT 4

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.

EXHIBIT 5

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

December __, 2012



TABLE OF CONTENTS

I. HISTORY AND PURPOSE OF ELECTRICITY AGGREGATION 1

II. DEFINITIONS..... 3

III. ROLE OF THE CITY..... 6

IV. ROLE OF THE CONSULTANT 7

V. SUPPLIER SELECTION..... 8

VI. POWER SUPPLY SERVICE AGREEMENT 13

VII. IMPLEMENTATION PROCEDURES 17

VIII. ADDITIONAL SERVICE TERMS AND CONDITIONS 23

IX. INFORMATION AND COMPLAINT NUMBERS 24

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.

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 96-0176¹ 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, which authorized 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.

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

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

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 City will conduct the due diligence, contract negotiation, and competitive bidding to obtain the low 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 achieving low prices, favorable terms, and high 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 decide 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 Chicago residents' preferences for the development of this Plan of Operation and Governance. Outreach efforts included public meetings, two statutorily-required public hearings, press releases, an information mailing, 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 Operations and Governances set forth in this document. Amendments to this Plan of Operations and Governances 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.

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

“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 Program. An example of an Associate member is an account receiving service from ComEd under its 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).²

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

“Delivery Point” shall mean the ComEd interconnect.

² 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 that are eligible to participate in the Program pursuant to 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 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 unit price (\$/metered kWh volume) associated with delivering electricity to the Delivery Point. Such costs include, but are not limited to, energy (the cost of purchasing blocks of peak and off-peak energy, plus any shaping premium, plus any load following premiums), distribution losses (energy losses attributable to the distribution system), Ancillary Services (any additional charges from PJM that are not included in the transmission service charge), capacity (any charges associated with meeting the capacity requirements for delivering energy through PJM), transmission service charge (charges that recover the costs of using the transmission system, including the costs for services necessary for the reliable operation of the transmission system), PJM Auction Revenue Rights (entitlement allocated annually to firm transmission service customers that entitle the holder to receive an allocation of revenues or charges from the annual firm transmission rights auction), PJM marginal losses (credits that are calculated as total net energy charges plus total net marginal loss charges), renewable portfolio standard (charges associated with fulfilling renewable energy obligations including alternative compliance payments to the ICC), purchase of receivables/utility consolidated billing (charges associated with participating in these ComEd billing programs),

“Full Electricity Requirements” shall mean a sale of electricity supplies and services by the supplier in which the supplier pledges to meet all of 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 Eligible Retail Customer by the City or the supplier identifying the procedures and protocols that they 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 Operations and Governance.

“Price to Compare” shall mean the unit price for ComEd electricity supply services for each customer class 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 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 on the basis of its qualification submittal 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 for 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.** During the term of the Agreement, 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 retail electric customer account information. The City may undertake, or assign to the Consultant or ARES, the task of verifying which residential and small commercial retail customers 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. Such future solicitations are subject to the approval of the Chicago City Council. 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, Eligible Retail Customers would

continue to receive service pursuant to ComEd's Default Tariff Service or, if individual Eligible Retail Customers 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 Cost Reimbursements.** The City may receive reimbursements from supplier(s) to reimburse the City's expenses associated with establishing and managing the Program, including the statutory responsibility to provide energy efficiency and demand management options for Members. The supplier(s) may treat such reimbursement expenses as pass-through expenses that are included in the Fixed Price.
- 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. Associate Members are to receive individual pricing offers from the Supplier, and are not entitled to the Fixed Price provided to Members.

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 responses and 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. Pursuant to his agreement with the City, the Consultant will be disqualified if he 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 such

agreement 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 potential suppliers, and to review proposals in a manner to secure the best value (as defined in the procurement documents) 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, and 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 Program. RFQ respondents must describe the process for adding new customer accounts to the Program 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. Reimbursements will be calculated as the difference between the Fixed Price and the Price to Compare multiplied by the number of kWh billed during each monthly billing cycle that the Member remains on the ComEd Default beyond the targeted enrollment date.
- 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.

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.
- f. **Data Services.** The Supplier will provide Members with access to their account’s historical electricity consumption and costs; information concerning the opportunities and advantages for energy efficiency and distributed generation; and analytical tools to aid in establishing more efficient use of electricity.

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.

III. 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 as authorized by the City Council.

Additionally, any pass-through costs, such as administrative reimbursements to the City, program costs, and assigned or bilateral agreements as defined in the program operations plan shall be disregarded for purposes of comparing the Fixed Price and the Price to Compare.

VI. POWER SUPPLY SERVICE AGREEMENT

The City, at its option, will execute a Power Supply Agreement with one or multiple 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 to reimburse the City for the for the costs associated with the development and management of the Program.
- 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 provide that all services required 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) the Agreement, the terms of the Agreement will prevail. 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 that the selected Supplier not utilize data provided to the Supplier for the purposes of managing the Program to market electricity supply offers to eligible retail customers located within the City.
 - 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 any Program Member or Associate Member unless such rate changes are provided for in the Agreement.
 - I. Hold Harmless.** The Agreement shall require the ARES(s) to agree to 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 Members and Associate Members, 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 the 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.

- J. Insurance.** The Agreement shall require the ARES(s) to obtain and maintain, for the duration of the Agreement, such proof of insurance as the City deems necessary.
- K. Additional Services.** The Agreement may provide that the ARES(s) assist the City in developing a Member education plan. The Agreement may provide that the ARES(s) assist the City in developing energy efficiency and/or demand response programs. The 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 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, or the possibility of a change in the same, is 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 permitted.
- M. Costs.** The Agreement may require that all costs of Program development and administration may be paid by the ARES(s).
- N. Termination of Service.** The 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 supplier(s) will terminate upon the expiration date in the contract. In the event that a renewal with the supplier(s), or a new Agreement with another ARES(s) has not been executed, the supplier(s) will, at the option of the City, either (i) return all Program Members and Associate Members to the ComEd Default Tariff Rate, (ii) continue to provide service to Members and Associate Members pursuant to the terms of the Agreement.
 - I.** If the City determines to allow the supplier(s) to continue supplying Members and Associate Members on a month-to-month basis, the supplier(s) will provide such service at a rate based on fair market value of electricity that is below the Price to Compare.
 - II.** If the supplier(s) cannot provide Electricity Supply at a rate below the Price to Compare, the supplier(s) will return Members and Associate

Members to the ComEd Default Tariff Rate provided it gives the City thirty (30) days' notice.

- iii. If the City determines to allow the supplier(s) to continue supplying Members and Associate Members on a month-to-month basis, the supplier(s) will continue under such an arrangement until the City provides it with 30 day written notice to discontinue providing service. 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, and as approved by the Chicago City Council, facilitate the transfer of the Members' and Associate Members' accounts to another ARES(s).

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 the supplier(s) 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 supplier(s) 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 supplier(s);
- 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.

3. 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 an ARES not providing services to the Program 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 Fixed 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 supplier(s) the responsibility to maintain the Program Database that will contain Member and Associate Member information. Member and Associate Member 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 supplier(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 supplier(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 the supplier(s), 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 supplier(s) shall keep Customer account information for a minimum of two years following the termination of the Service Agreement.
4. The supplier(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. 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 account holder chooses another ARES or decides to join the Program.

1. **Manner of Providing Notices and Information.** The City (or, at the City's direction, the supplier(s)) 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 supplier(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(s) selected to provide supply services to their account, the rates to be charged by the winning ARES(s), 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 has not been included in 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 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 Member 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, 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 at no cost. 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 either the Initial Opt-Out Period or at any subsequent time shall be allowed to join the Program at any time at no cost. These Eligible Retail Customers can enroll in the Program by contacting the winning ARES and completing an enrollment application. Such customers shall be entitled to the rates set forth in the Agreement. Once such customers 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 Inquiries.** 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. 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.

EXHIBIT 6
[VENDOR] RESPONSE TO RFQ

[TO BE INSERTED]