



Office of the City Clerk



SO2012-5074

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date: 7/25/2012

Sponsor(s): Burke, Edward M. (14)
O'Connor, Patrick (40)

Type: Ordinance

Title: Amendment of Title 11 of Municipal Code by adding new Chapter 11-25 concerning utilities and environmental protection

Committee(s) Assignment: Committee on Finance

①

CHICAGO December 12, 2012

To the President and Members of the City Council:

Your Committee on Finance having had under consideration

A substitute ordinance concerning the authority to adopt a Plan of Operation and Governance for the City of Chicago Electricity Aggregation Program and enter into an electricity and related services and equipment contract with a supplier.

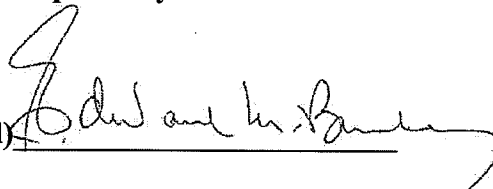
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Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

This recommendation was concurred in by _____ (a **viva voce vote** of members of the committee with _____ dissenting vote(s).

Respectfully submitted

(signed)



Chairman

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SUBSTITUTE
ORDINANCE
AS AMENDED

WHEREAS, The Illinois Power Agency Act (“Act”), codified at 20 ILCS 3855/1-1, et. seq., authorizes the corporate authorities of the City of Chicago (“City”) to adopt an ordinance under which it may aggregate residential and small commercial retail electric loads within the City; and

WHEREAS, The Act also authorizes the City, for the purpose of electricity aggregation, to solicit bids and enter into service agreements to facilitate for those loads the sale and purchase of electricity and related services and equipment; and

WHEREAS, The Act further requires, before implementing an opt-out electricity aggregation program, the corporate authorities of the City to submit a referendum to its residents to determine whether or not the electricity aggregation program shall operate as an opt-out program for residential and small commercial retail customers; and

WHEREAS, On June 27, 2012, the City Council, by unanimous vote, passed a resolution authorizing the placement on the November 6, 2012 election ballot a referendum question asking Chicago voters whether the City shall have authority to operate an opt-out electricity aggregation program; and

WHEREAS, In the November 6, 2012 election, City voters approved the City’s authority as posed in the referendum question, thereby authorizing the City to operate an opt-out electricity aggregation program; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated herein and made part hereof as though fully set forth herein.

SECTION 2. For purposes of this ordinance, the following definitions shall apply:

“Associate member”, “default tariff service”, “fixed price”, “member”, and “price to compare” shall have the meaning ascribed to the terms in Attachment 2.

“City” means the City of Chicago.

“ComEd” means the Commonwealth Edison Company.

“Program” means the program established by the City to provide residential and small commercial retail members and associate members with retail electric supply as described in

Attachment 1.

“Supplier” means one or more retail electricity suppliers which the city selects and with which the city enters a contract to provide for the purchase of electricity and related services and equipment for purposes of the program as provided in SECTION 4 of this ordinance.

SECTION 3. The Mayor or his designee is hereby authorized to adopt a plan of operation and governance for the program consistent with the provisions of this ordinance and in a form substantially similar to the "City of Chicago Electricity Aggregation Program: Plan of Operation and Governance" document attached hereto as Attachment 1.

SECTION 4. The Mayor or his designee is hereby authorized to enter into an electricity and related services and equipment contract consistent with the provisions of this ordinance and in a form substantially similar to the contract attached hereto as Attachment 2 with a winning bidder selected through a competitive bidding process conducted by the City. This SECTION does not authorize entering into any contract other than the contract specifically described herein.

SECTION 5. In addition to any other applicable requirement, the following requirements shall be included in the program:

- (a) The supplier shall make good-faith efforts to comply with the city’s MBE/WBE participation goals as set forth in Section 2-92-430 of the Municipal Code of Chicago. Compliance with this SECTION or any request for a waiver of the requirement of this SECTION shall be in a manner substantially consistent with the “Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment for MBE/WBE Professional Services” document attached hereto as Attachment 3.
- (b) If the price to compare falls below the fixed price, then the supplier, at its option, may establish a rate equal to the ComEd price to compare or terminate this agreement and return members to the ComEd default tariff service at no cost to the City or the members.
- (c) No fee for early termination, enrollment, switching, or relocation, or any other fee or surcharge, shall be imposed on members.
- (d) Actual costs incurred by the City in conjunction with the program, including any fees paid to outside vendors for management of the program, shall be recovered by the City through payments from the supplier.
- (e) Program prices for each customer class shall be uniform and shall not vary based upon address, income, credit status, ethnicity, race, religion or any

other legally impermissible basis.

- (f) Residential and small commercial customers served under the program shall continue to receive monthly invoices from ComEd containing all electricity charges.

SECTION 6. Section 2-51-050 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows,

2-51-050 Commissioner of fleet and facility management – Powers and duties.

The commissioner of fleet and facility management shall have the following duties and responsibilities:

(Omitted text is not affected by this ordinance)

r. To procure and oversee public utilities for city-owned or leased facilities, including airport facilities and to oversee the implementation of public utility franchise agreements;

r-1. To operate, oversee and maintain the city's opt-out electricity aggregation program;

s. To enter into grant agreements with government entities, private businesses and civic groups necessary to implement energy conservation programs at all public buildings and public grounds operated, managed and maintained by the department;

(Omitted text is not affected by this ordinance)

SECTION 7. This ordinance shall take effect upon passage and approval.

Edward M. Burke
Patrick J. O'Connor
Alderman, 14th Ward
Alderman, 40th Ward

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

December __, 2012

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).

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.

“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.

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. 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

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 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

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

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,

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

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

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.

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

- 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.

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.

- 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.]

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

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.

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:

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

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

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.

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).



FOR IMMEDIATE RELEASE

December 7, 2012

CONTACT:

Mayor's Press Office

312.744.3334

press@cityofchicago.org

**MAYOR EMANUEL ANNOUNCES INTEGRYS ENERGY SERVICES AS WINNER OF
MUNICIPAL AGGREGATION CONTRACT**

*Agreement Will Deliver Savings and Cleaner Energy for Chicagoans; Finance
Committee Will Review Next Week*

Mayor Emanuel announced that the City has selected Integrys Energy Services from among eight interested companies to serve as Chicago's electricity supplier following an open and competitive two-stage bidding process. After undergoing a thorough review of its financial strength, customer service ratings, and ability to deliver cleaner energy, Integrys Energy Services was selected because it offered the lowest price margin. Based on the submitted price margins and current market conditions, the City projects that Chicagoans will save 20 to 25 percent a month on their first electricity bills from February to June, representing about \$25 in savings for the average household. Over the life of an agreement that ends in May 2015, Chicagoans will save 8 to 12 percent on their bills, resulting in a total savings of \$130 to \$150 for the average household for the entire agreement. In addition to delivering meaningful savings to Chicago residents and small businesses, the City's agreement with Integrys Energy Services will set new standards nationally by eliminating coal from its fuel mix.

"By buying electricity in bulk, we have secured an agreement that will put money back into the pockets of Chicago families and small businesses while ensuring that our electricity comes from cleaner sources," said Mayor Emanuel. "I look forward to working with the City Council to approve and implement the agreement on an expedited timeframe so we can start delivering savings."

"I am grateful that the City has identified a supplier which will enable Chicago residents and small businesses to save money on their electricity bills," said Alderman Edward M. Burke. "During these tough economic times, it is paramount that city leaders do everything possible to achieve savings for consumers."

- Integrys Energy Services will be required to always beat or match the ComEd price.

The program will be operated on an opt-out basis, meaning that Chicago residential and small commercial customers will be automatically transitioned into the program unless they opt-out. Residents and small businesses will have three ways to opt-out of the agreement, via phone, mail, and the web. The City will send an opt-out letter to each eligible customer, and recipients will have 14 days to opt out of the program. Additionally, residents can opt-out of the program at any time without charge, fee or penalty.

The City selected Integrys Energy Services to be its electricity supplier after an open and competitive, two-stage process. During the first phase, Integrys Energy Services was one of eight companies to respond to a Request for Qualifications, which required companies to establish that they could meet a number of customer service, account management, clean energy, and corporate health requirements. During the second stage, which ended on Friday afternoon, the City selected Integrys Energy Services on the basis of lowest price margin.

#

APPROVED
Robert E. Emanuel, Sr.
Mayor
12/12/12

APPROVED
Robert R. Peltz
CORPORATION COUNSEL