

## **Power Supply Agreement**

### **AGREEMENT BY AND BETWEEN THE VILLAGE OF OAK PARK AND CONSTELLATION NEWENERGY, INC. TO PROVIDE FULL-REQUIREMENTS ELECTRICITY SUPPLY AND RELATED SERVICES FOR THE VILLAGE'S ELECTRIC AGGREGATION PROGRAM**

This Agreement ("**Agreement**") is entered into as of this 14<sup>TH</sup> day of April, 2014 ("**Effective Date**") between the **VILLAGE OF OAK PARK**, an Illinois home rule municipal corporation ("**Village**" or "**Oak Park**") and **CONSTELLATION NEWENERGY, INC.**, a Delaware corporation ("**Supplier**") (collectively also referred to as the "**Parties**").

#### **RECITALS**

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

B. In order to identify qualified suppliers of electricity for the Program, the Village received statements of qualifications and conducted an electronic auction.

C. The Village conducted the procurement process pursuant to the bid package attached to and incorporated into this Agreement as **Exhibit A** ("**Bid Package**").

D. The Supplier was selected by the Village pursuant to its response to the Bid Package, which response is attached to this Agreement as **Exhibit B** ("**Bid Response**") and the result of the electronic auction.

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

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

a. Supplier is certified by the Illinois Commerce Commission as a Retail Electric Supplier and is authorized to sell Full-Requirements Electricity Supply to customers in the State of Illinois utilizing the existing transmission and distribution systems of ComEd within the service areas of ComEd;

b. Supplier is currently registered with ComEd to serve residential and small commercial customers under Rate RESS - Retail Electric Supplier Service with Rider PORCB - Purchase of Receivables and Consolidated Billing; and

c. Supplier has at least three years continuous experience as a Retail Electric Supplier

providing Full-Requirements Electricity Supply to at least 25,000 residential and commercial customers.

G. Supplier acknowledges and agrees that it will provide the Services, including without limitation Full-Requirements Electricity Supply to all Participating Customers, pursuant to the Bid Package, the Bid Response, this Agreement, and the Requirements of Law.

H. The Village desires to enter into this Agreement with Supplier to provide Full-Requirements Electricity Supply by the Supplier to all Eligible Customers pursuant to the Program.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the Village and the Supplier do hereby agree as follows:

### **ARTICLE 1 RECITALS**

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

### **ARTICLE 2 DEFINITIONS**

1. **"Aggregate"** means the total number of Eligible Customers in the Village.
2. **"Aggregation Ordinance"** means that certain ordinance adopted by the Village on May 28, 2013 as Ordinance Number 2013-29 authorizing the Program.
3. **"Aggregation Statute"** means Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92.
4. **"Bid Package"** means the bid documents provided to bidders pursuant to the Joint Power Supply Bid and attached to this Agreement as **Exhibit A**.
5. **"Bid Response"** means the response submitted by the Supplier to the Bid Package, which is attached to his Agreement as **Exhibit B, and the winning auction bid**.
6. **"Billing Services"** means those services describe in Section 4.4 of this Agreement, including all subsections of Section 4.4.
7. **"ComEd"** means Commonwealth Edison.
8. **"Compliance Services"** means those services identified in Section 4.5 of this Agreement, including all subsections of Section 4.5.
9. **"Confidential Information"** is defined in Section 9.1 of this Agreement.
10. **"Customer Information"** means that certain information that the Electric Utility is



required to provide to the corporate authorities of the Village pursuant to the Aggregation Statute, including without limitation those names and addresses of residential and small commercial retail customers in the Aggregate area that are reflected in the Electric Utility's records at the time of the request.

11. **"Data"** is defined in Section 9.2 of this Agreement.
12. **"Electric Utility"** means ComEd.
13. **"Eligible Customers"** means residential and small commercial electricity customers receiving Full-Requirements Electricity Supply within the Village who are eligible to participate in the Program pursuant to the Aggregation Statute and the Requirements of Law.
14. **"Energy"** means generated electricity.
15. **"Enrollment Services"** means those services described in Section 4.3 of this Agreement, including all subsections of Section 4.3.
16. **"Extended Term"** is defined in Section 5.1 of this Agreement.
17. **"Force Majeure Event"** is defined in Section 7.1 of this Agreement.
18. **"Full-Requirements Electricity Supply"** means all services or charges necessary to provide the continuous supply of electricity to all Eligible Customers, including, without limitation, energy, capacity, losses, renewable portfolio standard (RPS) charges, imbalances, load factor adjustments, transmission costs, congestion charges, marginal losses, ancillary services, applicable taxes, and any additional necessary services or charges.
19. **"Full-Requirements Electricity Supply Services"** means those portions of the Services described in Section 4.1 of this Agreement, including all subsections of Section 4.1.
20. **"ICC"** means the Illinois Commerce Commission
21. **"Independent System Operator" or "ISO"** means that certain independent system operator for the Electric Utility established pursuant to Section 16-126 of the Public Utilities Act, 220 ILCS 5/16-626.
22. **"Joint Power Supply Bid"** means the bidding process conducted by the Village to identify the Supplier.
23. **"New Customers"** are defined in Section 4.3.9 of this Agreement.
24. **"Opt-Out Notice"** means the notices described in Section 4.2.1.1 of this Agreement and provided to Eligible Customers informing them of their ability to opt-out of the Program pursuant to the Act and the Requirements of Law: 25. **"Opt-Out Period"** means the time prior to the implementation of the Program during which Eligible Customers may choose not to participate in the Program pursuant to the Act and the Requirements of Law.
26. **"Opt-Out Process"** is defined in Section 4.2.1 of this Agreement.

27. **"Participating Customers"** means those Eligible Customers who do not opt out of the Program and are not Special Billing Customers.
28. **"Plan of Governance"** or **"POG"** means that certain Plan of Operation and Governance approved by the Village on pursuant to the Aggregation Statute.
29. **"Point of Delivery"** means the point specified by the Electric Utility at which the Supplier must deliver the Full-Requirements Electricity Supply to the Electric Utility for distribution to Participating Customers.
30. **"Price"** means the fixed price expressed in cents per kilowatt hour at which the Supplier will provide the Services as set forth in **Exhibit C** to this Agreement.
31. **"Program"** means the electricity aggregation program operated by the Village in accordance with the Aggregation Statute and authorized by the Aggregation Ordinance, to aggregate residential and small commercial retail electrical loads located within the corporate limits of the Village for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Full-Requirements Electricity Supply and related Services.
32. **"Program Implementation Services"** means those portions of the Services described in Section 4.2 of this Agreement, including all subsections of Section 4.2.
33. **"Requirements of Law"** means the Aggregation Ordinance, the Aggregation Statute, the Plan of Governance, the Intergovernmental Agreement, the rules and regulations of the ICC, the rules, regulations and tariffs applicable to the Electric Utility and the Independent System Operator, and all other applicable federal, state, and local laws, orders, rules, and regulations.
34. **"Retail Electric Supplier"** or **"RES"** means an "alternative retail electric supplier" as that term is defined in Section 16-102 of the Public Utilities Act, 220 ILCS 5/16-102.
35. **"Services"** means the Full-Requirements Electricity Supply Services, Program Implementation Services, Enrollment Services, Billing Services, and Compliance Services provided in Article 4 of this Agreement.
36. **"Special Billing Customers"** are defined in Section 4.3.8 of this Agreement.
37. **"Supplier"** means Constellation NewEnergy, Inc. or the lawful successor, transferee, designee, or assignee thereof.
38. **"Tariffed Service"** means the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 and defined by its rates on file with the ICC pursuant to Article IX of the Public Utilities Act, 220 ILCS 5/9-101 et seq.
39. **"Term"** is defined in Section 5.1 of this Agreement.
40. **"Village"** means the Village of Oak Park.
41. **"Withdrawing Customer"** is defined in Section 4.3.6 of this Agreement.



### **ARTICLE 3 PROGRAM RESPONSIBILITIES**

#### **3.1 Village Responsibilities.**

3.1.1 Customer Information. Supplier and Village shall cooperate to obtain the Customer Information from ComEd, subject to the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH.

3.1.2 Notices from ComEd. The Village shall promptly forward to Supplier any notices received by the Village from ComEd concerning the accounts of Participating Customers.

3.1.3 No Village Obligations to Provide Services. The parties acknowledge and agree that the Village is not responsible to provide, and this Agreement shall not be construed to create any responsibility for the Village to provide, the Services to any person or entity, including without limitation the Supplier, the Electric Utility, the ISO, Eligible Customers, Special Billing Customers, or Participating Customers.

3.1.4 No Village 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 Village to any other person or entity, including without limitation the Supplier, the Electric Utility, the ISO, Eligible Customers, Special Billing Customers, or Participating Customers.

#### **3.2 Supplier Obligations.**

3.2.1 Provision of Services. The Supplier will provide all of the Services described in Article 4 of this Agreement throughout the Term, including but not limited to the provision of sufficient Full-Requirements Electricity Supply to allow the Electric Utility to deliver and distribute uninterrupted electric service to all Participating Customers. The Supplier acknowledges and agrees that the Village is not responsible to provide, and shall not be liable to the Supplier or any Eligible Customer for any failure to provide, any Services pursuant to this Agreement.

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

### **ARTICLE 4 SUPPLIER SERVICES**

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

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

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

4.1.1.2 Scheduling. Supplier shall schedule the Full-Requirements Electricity

Supply for distribution as required by the ISO and the Electric Utility.

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

4.1.1.4 Transmission and Delivery to Electric Utility.

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

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

4.1.2 Pricing. Except as provided in Section 7.2 of this Agreement, the Supplier shall receive the Price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation, except that the Supplier may impose an early termination fee on Withdrawing Customers pursuant to Section 4.3.5 of this Agreement.

4.1.3 **Intentionally Left Blank**

4.1.4 Billing. The Village acknowledges and agrees that ComEd will bill Participating Customers for the price of the Full-Requirements Electric Supply as part of its billing for the distribution of such supply, and that the Supplier shall not be responsible for billing Participating Customers.

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

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

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



pursuant to the Requirements of Law. Opt-Out Notices must include all information required pursuant to the Requirements of Law, including without limitation including the terms and conditions of participation in the Electric Aggregation Program, the cost to the Customer of Full-Requirements Electricity Supply under the Program, the methods by which Customers may opt out of the Program, and the length of the Opt-Out Period. The Opt-Out Notices must prominently include the toll-free telephone number and secure website described Section 4.2.1.3. The form and content of the Opt-Out Notices must be approved by the Village prior to mailing by the Supplier.

4.2.1.2 Notices to Special Billing Customers. The Village acknowledges that it will provide notices to Special Billing Customers concerning the Program, the Price, the rates charged to Special Billing Customers under their existing service, and the opportunity for Special Billing Customers to opt in to the Program as provided in Section 4.3.9 of this Agreement.

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

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

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

4.3 Enrollment Services. The Supplier must supply the following Enrollment Services as provided in this Section 4.3:

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

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

4.3.3 Term of Enrollment. Participating Customers who do not opt out of the Program

shall be enrolled in the Program by the Supplier at the end of the Opt-Out Period, and shall remain enrolled in the Program until the end of the Term, unless the Agreement is terminated pursuant to its terms or the Participating Customer withdraws from the Program pursuant to Section 4.3.6 of this Agreement.

4.3.4 Direct Access Service Request. The Supplier shall submit a direct access service request to ComEd for each Participating Customer in compliance with the "standard switching" subsection of *Rate RDS - Retail Delivery Service*, in order to allow Full-Requirements Electricity Supply to commence following the Village's implementation schedule which is attached as ***Exhibit E ("Implementation Schedule")***.

4.3.5 Payment of Switching Fees. The Supplier shall pay, on behalf of each Participating Customer, any switching fee imposed by the Electric Utility related to the enrollment of a Participating Customer in the Program.

4.3.6 Withdrawal by a Participating Customer. For Participating Customers who notify the Supplier after the completion of the Opt-Out Period that the Participating Customer desires to withdraw from the Program ("***Withdrawing Customer***"), the Supplier must, at the direction of the Participating Customer, switch the Participating Customer either to an alternative Retail Electric Supplier identified by the Participating Customer or to Tariffed Service within 30 days of receipt of notice of such termination. No later than 5 business days after receipt of a request to withdraw, the Supplier shall provide the Withdrawing Customer with written notice, in a form approved in advance by the Village and in compliance with all Requirements of Law, identifying alternative Retail Electric Suppliers and notifying the Withdrawing Customer that the Participating Customer shall either request transfer of service to a new RES or to Tariffed Service. If, in response to that notice, the Withdrawing Customer does not identify an RES, the Supplier may switch the Withdrawing Customer to Tariffed Service. The Supplier may assess an early termination fee only to Withdrawing Customers that withdraw for reasons other than moving out of the Municipality in an amount no greater than \$50 and as provided in the Price.

4.3.7 Customer Service Inquiries. After completion of the Opt-Out Period, Supplier must maintain and operate a toll-free telephone number and internet website for the purpose of receiving questions and comments from Participating Customers concerning the Full-Requirements Electricity Supply. The Supplier may inform Participating Customers that questions about the delivery and billing of the Full-Requirements Electricity Supply should be directed to ComEd. Customer must promptly and courteously address customer service inquiries, as reasonably determined by the Village.

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

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

• *Residential Single Family with Electric Space Heat Delivery Class*



•*Residential Multi Family with Electric Space Heat Delivery Class*

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

•*Rate BESH – Basic Electric Service Hourly Pricing*

•*Rate RDS – Retail Delivery Service; and*

c. Any eligible Customer in the commercial customer class, as described in Section

4.4.2 of this Agreement, that is taking service under the following ComEd rates:

•*Rate BESH – Basic Electric Service Hourly Pricing*

•*Rate RDS – Retail Delivery Service. (collectively, the "Special Billing Customers").*

4.3.9 New Customers. After the commencement of the Program and the enrollment of Participating Customers, the Supplier shall, at the request of the Village or of a New Customer, as defined in this Section 4.3.9, immediately enroll the following customers in the Program and provide Full-Requirements Electricity Supply to those customers at the Price:

- a. Any Eligible Customer within the Village that moves to a new location within the Village;
- b. Any Eligible Customer that moves into an existing or new facility within the Village;
- c. Any Eligible Customer that previously opted out of the Program during the Opt-Out Period; and
- d. Any Eligible Customer that was inadvertently omitted from the list of Participating Customers and not enrolled in the Program. (collectively, the "**New Customers**");

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

4.4.1 Billing Generally. Supplier shall confirm that billing to Eligible Customers will be provided by ComEd under a consolidated billing format pursuant to "*Rider PORCB – Purchase of Receivables and Consolidated Billing*," and pursuant to the Requirements of Law.

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

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

- *Residential Single Family without Electric Space Heat Delivery Class*
- *Residential Multi Family without Electric Space Heat Delivery Class*
- *Residential Single Family with Electric Space Heat Delivery Class*
- *Residential Multi Family with Electric Space Heat Delivery Class*

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

- *Watt-Hour Delivery Class*
- *Small Load Delivery Class*

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

4.6 Green Energy Alternative. The Supplier shall offer on an opt-in basis a 100% green energy national renewable energy credits ("RCE") alternative to all eligible Program participants pursuant to this Agreement at the price of 7.57¢ kWh for the term of this Agreement.

## ARTICLE 5 TERM

5.1 Term. This Agreement shall take on effect on the Effective Date as defined herein and shall expire upon the June 2015 meter read dates (the "**Term**"). The Village and the Supplier may extend the Term for additional periods of time up to 3 years for each extension, by written agreement approved and executed by each of them (each an "**Extended Term**"). Nothing in this Article 5 related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by the Village to the Supplier will continue beyond the Term or an approved Extended Term.

## ARTICLE 6 REMEDIES

6.1 Village's General Remedies. In addition to every other right or remedy provided to the Village under this Agreement, if the Supplier fails to comply with any of the provisions of this Agreement (for reason other than an order, rule, or regulations of a governmental agency or court having jurisdiction over the Supplier and this Agreement), then the Village may give notice to the Supplier specifying that failure. The Supplier will have 15 calendar days after the date of that notice to take all necessary steps to comply fully with this Agreement, unless (a) this Agreement specifically provides for a shorter cure period or (b) an imminent threat to the public health, safety, or welfare arises that requires a shorter cure period, in which case the notice must specify the cure period, or (c) compliance cannot reasonably be achieved within 15 calendar days but the Supplier promptly commences a cure and diligently pursues the cure to completion. If the Supplier fails to comply within that 15-day period, or the shorter period if an imminent threat, or if the Supplier fails to promptly commence a cure and diligently pursue the cure to completion, then the Village, 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 in accordance with the following:

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

(2) At the hearing, the Supplier will have the opportunity to state its position on the matter, present evidence, and question witnesses. Thereafter, the Village will determine whether or not this Agreement will be terminated. The hearing must be public and held on record.

(3) The decision of the Village must be in writing and delivered to the Supplier by certified mail.

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

6.2 Supplier's General Remedies. In addition to every other right or remedy provided to Supplier under this Agreement, if the Village breaches or fails to perform any of its Responsibilities or duties contained in this Agreement in any material respect, which are not otherwise excused by any other provision of this Agreement or are not cured in all material respects within fifteen (15) days, or if any Representations or Warranties made by the Village are untrue when made, then Supplier shall have the right to terminate this Agreement, at which time Participating Customers may be moved back to Tariffed Service and Supplier can seek, along with any other remedy available at law or in equity, reimbursement for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Supplier in carrying out its duties under this Agreement.

## **ARTICLE 7 FORCE MAJEURE EVENTS**

7.1 Force Majeure Events. The Supplier shall not be held in default under, or in noncompliance with, the provisions of the Agreement, nor suffer any enforcement or penalty

relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by a "Force Majeure Event," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Supplier's ability to anticipate or control. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

## ARTICLE 8 INDEMNIFICATION AND INSURANCE

### 8.1 Indemnification.

8.1.1 The Supplier shall indemnify, hold harmless and defend the Village, 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, arising in the course of the Supplier's provision of the Services to the extent of fault of the Supplier, including the Supplier's negligent acts, errors or omissions. This duty shall survive for all claims made or actions filed within one (1) year following either the expiration or earlier termination of this Agreement. The Village shall give the Supplier timely written notice of its obligation to indemnify and defend the Village after the Village'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 Village. Nothing herein shall be construed to limit the Supplier's duty to indemnify the Village by reference to the limits of insurance coverage described in this Agreement.

8.1.2 The Village shall indemnify, hold harmless and defend the Supplier, 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, arising in the course of the Supplier's provision of the Services to the extent of fault of the Village, including the Village's negligent acts, errors or omissions. This duty shall survive for all claims made or actions filed within one (1) year following either the expiration or earlier termination of this Agreement. The Supplier shall give the Village timely written notice of its obligation to indemnify and defend the Supplier after the Supplier'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 Village.

8.2 Insurance. Contemporaneous with the Supplier's execution of this Agreement, the Supplier shall provide certificates and policies of insurance, all with coverages and limits acceptable to the Village, and evidencing at least the minimum insurance coverages and limits as set forth in **Exhibit D ("Insurance")** to this Agreement. For good cause shown, the Village Manager, or the Manager's designee may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the Village Manager, the Manager's designee may impose in the exercise of the Manager's sole discretion. Such certificates and policies shall be in a form acceptable to the Village and from companies with a general rating of A minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to the Village. 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.

8.3 Liability. Except as otherwise specifically provided herein, in no event will either Party be liable under this Agreement to the other Party, to a participating customer or third party for any incidental, indirect, special, consequential or punitive damages in connection with or arising out of any performance or non-performance of this Agreement or any event of default, regardless of whether such claims are based upon breach of warranty, tort (including but not limited to negligence of any degree), strict liability, contract, operation of law, equity or otherwise.

## **ARTICLE 9 CONFIDENTIAL INFORMATION**

9.1 Confidential Information. All information and data disclosed by either Party to the other Party and developed or obtained under this Agreement must be treated by the other Party as proprietary and confidential information ("Confidential Information"). A Party must not disclose Confidential Information without the other Party's prior written consent. No person may use Confidential Information for any purpose other than for the proper performance of the Services. The obligations under this Section 9.1 do not apply to Confidential Information that is (i) in the public domain without breach of this Agreement, (ii) developed by a Party independently from this Agreement, (iii) received by a Party on a non-confidential basis from others who had a right to disclose the information, or (iv) required by law to be disclosed, but only after prior written notice has been received by the disclosing Party and the disclosing Party has had a reasonable opportunity to protect disclosure of the Confidential Information. The Village hereby agrees, unless otherwise required by the Illinois Freedom of Information Act or other applicable law or regulation, to keep all Confidential Information confidential and not to, directly or indirectly, disclose or reveal to any third party, reproduce or utilize for its own benefit, other than pursuant to this Agreement, any Confidential Information and any information derived therefrom. The Village further agrees to immediately notify Supplier in writing in the event it discovers any unauthorized disclosure of Confidential Information and agrees to take all reasonable steps to preserve the confidentiality of Confidential Information. The Village shall assume responsibility that its agents, representatives, elected officials, officers and employees will similarly preserve Confidential Information and agree to limit access to Confidential Information to only those agents, representatives, elected officials, officers and employees that have a bona fide need to know Confidential Information. The Village agrees that upon termination of this Agreement, the Village will discontinue all use of Confidential Information and, at no cost to Supplier, promptly return all Confidential Information received by it during the Term and any information derived therefrom. The confidentiality obligations of the Village under this section shall survive termination of this Agreement. The Village also agrees that its obligations under this Article 9 shall also apply to any confidential information or trade secrets of any third party with whom Supplier has agreed to keep confidential and not disclose, and which the Village has actual or constructive notice of such agreement.

9.2 Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Agreement ("**Data**"), other than the Supplier's confidential information, will be and remain the sole property of the Village. The Supplier must promptly deliver all Data to the Village at the Village'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.

## **ARTICLE 10 MISCELLANEOUS**

10.1 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; 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 the Village:

Cara Pavlicek  
Village Manager  
Village of Oak Park  
123 Madison Street  
Oak Park, Illinois 60302

To Supplier:

Franck Orcel  
Director of Business Development  
Constellation  
100 Constellation Way Suite 1200  
Baltimore, Maryland 21202

With a copy to:

Paul L. Stephanides  
Village Attorney  
Village of Oak Park  
123 Madison Street  
Oak Park, Illinois 60302

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

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

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

10.5 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.



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

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

10.8 Venue. Except as to any matter within the jurisdiction of the Illinois Commerce Commission, 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, Cook 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.

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

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

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

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

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

10.14 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the other Party, which consent shall not be unreasonably withheld.

10.15 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.

10.16 Effective Date. As used in this Agreement, the Effective Date of this Agreement shall be the date that the Village Manager for the Village of Oak Park executes this Agreement as set forth below.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-  
SIGNATURE PAGE FOLLOWS]**





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

**VILLAGE OF OAK PARK**



Name: Cara Pavlicek  
Title: Village Manager

Date: April 15, 2014


**ATTEST:**



Name: Teresa Powell  
Title: Village Clerk

Date: April 15, 2014

**CONSTELLATION NEWENERGY, INC.**

 EV/MS

Name: Michael S. Kral  
Title: Director, Operations

Date: April 15, 2014


**ATTEST:**



Name: Robert Serra  
Title: Senior Consultant

Date: April 15, 2014

REVIEWED AND APPROVED  
AS TO FORM

 APR 15 2014  
LAW DEPARTMENT

**EXHIBIT A - BID PACKAGE**



**EXHIBIT B - BID RESPONSE**

## EXHIBIT C - PRICE

Auction (Village of Oak Park (June 2015 End))

Page 1 of 1

### Village of Oak Park (June 2015 End)

Created on 09 April 2014 by tmullin

TIME LEFT:

0:00

**12 Months  
(Brown Energy)**

**\$0.07470**  
Constellation

**12 Months  
(100% IL-  
Sourced Green  
Energy)**

**\$0.07900**  
Integrus Energy

**\$0.08559**  
Verde Energy

**12 Months  
(100%  
Nationally-  
Sourced Green  
Energy)**

(no bids)

Price Over Time	Time (seconds) / Bid Price (USD)	
\$0.12		
\$0.08		
\$0.04		
	40	60 120
12 Months (Brown Energy) ✓		



## EXHIBIT D - INSURANCE COVERAGES

A. Worker's Compensation and Employer's Liability with limits not less than:

- (1) Worker's Compensation: Statutory;
- (2) Employer's Liability:
  - \$500,000 injury-per occurrence
  - \$500,000 disease-per employee
  - \$500,000 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.

All employees shall be included as insureds.

C. Comprehensive General Liability with coverage written on a "claims-made" basis and with limits no less than:

\$2,000,000 Bodily Injury and Property Damage Combined Single Limit

Coverage is to be written on an "claims-made" basis.

Coverages shall include:

- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

D. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

E. Owner as Additional Insured. The Village shall be named as additional insureds on all policies except for worker's Compensation.

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

## **EXHIBIT E**

### **IMPLEMENTATION SCHEDULE**

- April 17, 2014: Supplier to serve by mail opt-out notices to eligible Program participants
- May 8, 2014: Deadline for eligible Program participants to opt-out
- May 9, 2014: Supplier to submit file back to ComEd for account number information
- May 13, 2014: Supplier to submit account enrollments to ComEd