

MASTER POWER SUPPLY AGREEMENT

AGREEMENT BY AND BETWEEN THE TOWNSHIP OF PALATINE AND CONSTELLATION
NEWENERGY, INC.

TO PROVIDE FULL-REQUIREMENTS ELECTRICITY SUPPLY AND RELATED SERVICES
FOR THE TOWNSHIP'S ELECTRIC AGGREGATION PROGRAM

This Agreement ("Agreement"), is entered into as of this 25th day of June, 2013 ("Effective Date") between the Township of Palatine, Cook County, Illinois, an Illinois township ("Township") and Constellation NewEnergy, Inc. ("Supplier") (each a "Party" and collectively, the "Parties").

RECITALS

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

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

C. The purpose of this Agreement is for the Supplier to provide the Full-Requirements Electricity Supply Services and the Program Implementation Services as defined herein (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 established in this Agreement.

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

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

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

c. Supplier has at least three years continuous experience as a Retail Electric Supplier and has provided Full-Requirements Electricity Supply to at least 25,000 residential or commercial customers.

d. Supplier acknowledges and agrees that it will provide the Services, including without limitation Full-Requirements Electricity Supply to all Participating

Customers, pursuant to the Bid Package, the Bid Response, this Agreement, and the Requirements of Law.

e. The Township desires to enter into this Agreement with Supplier for the provision by the Supplier of Full-Requirements Electricity Supply to all Eligible Customers pursuant to the Program.

AGREEMENT

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

ARTICLE 1 RECITALS

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

ARTICLE 2 DEFINITIONS

The following terms shall have the meanings ascribed to them in this section:

2.1 “Aggregate” means the total number of Eligible Customers that are within the unincorporated portion of the Township.

2.2 “Aggregation Ordinance” means that certain ordinance adopted by the Township authorizing the Program.

2.3 “Aggregation Statute” means Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 and applicable rules and regulations of the Illinois Commerce Commission.

2.4 “Bid Package” means the bid documents provided to the pre-qualified bidders pursuant to the Power Supply Bid and attached to this Agreement as Exhibit A.

2.5 “Bid Response” means the response submitted by the Supplier to the Bid Package, which is attached to this Agreement as Exhibit B.

2.6 “Billing Services” means those services described in Section 4.4 of this Agreement, including all subsections of Section 4.4.

2.7 “ComEd” means Commonwealth Edison.

2.8 “Compliance Services” means those services identified in Section 4.5 of this Agreement, including all subsections of Section 4.5.

- 2.9 “Confidential Information” means the information defined in Section 9 of this Agreement.
- 2.9.5 “Corporate Authorities” means the Township Board of Trustees of Palatine Township, Cook County, Illinois.
- 2.10 “Customer Information” means that certain information that the Electric Utility is required to provide to the Corporate Authorities of the Township pursuant to the Aggregation Statute, including without limitation those names and addresses and Electric Utility account numbers of residential and small commercial retail customers in the Aggregate area that are reflected in the Electric Utility's records at the time of the request.
- 2.11 “Data” means the data defined in Section 9 of this Agreement.
- 2.12 “Electric Utility” means ComEd.
- 2.13 “Eligible Customers” means residential and small commercial electricity customers receiving Full-Requirements Electricity Supply within the unincorporated portion of the Township that are not otherwise part of a municipality who are eligible to participate in the Program pursuant to the Aggregation Statute and the Requirements of Law.
- 2.14 “Energy” means generated electricity.
- 2.15 “Enrollment Services” means those services described in Section 4.3 of this Agreement, including all subsections of Section 4.3.
- 2.16 “Extended Term” means the term defined in Section 5.1 of this Agreement.
- 2.17 “Force Majeure Event” means the circumstances defined in Section 7.1 of this Agreement.
- 2.18 “Full-Requirements Electricity Supply” means all services or charges necessary to provide the continuous supply of electricity to all Participating Customers, including, without limitation, Energy, capacity, losses, renewable portfolio standard (RPS) charges, imbalances, load factor adjustments, transmission costs, congestion charges, marginal losses, ancillary services, PORCB, taxes applicable only to the Supplier, and any additional necessary services or charges.
- 2.19 “Full-Requirements Electricity Supply Services” means those portions of the Services described in Section 4.1 of this Agreement, including all subsections of Section 4.1.
- 2.20 “ICC” means the Illinois Commerce Commission
- 2.21 “Independent System Operator” or “ISO” means that certain independent system operator for the Electric Utility established pursuant to Section 16-126 of the Public Utilities Act, 220 ILCS 5/16-126 .
- 2.22 “Joint Power Supply Bid” means the bidding process conducted by NIMEC on behalf of the Township to identify the Supplier.

- 2.23 “New Customers” means the customers defined in Section 4.3.9 of this Agreement.
- 2.24 “Opt-Out Notice” means the notices described in Section 4.2.1.1 of this Agreement and provided to Eligible Customers informing them of their ability to opt-out of the Program pursuant to the Requirements of Law.
- 2.25 “Opt-Out Period” means the time prior to the implementation of the Program during which Eligible Customers may choose not to participate in the Program pursuant to the Requirements of Law.
- 2.26 “Opt-Out Process” means the process defined in Section 4.2.1 of this Agreement.
- 2.27 “Participating Customers” means those Eligible Customers who do not opt out of the Program and are not Special Billing Customers, and New Customers.
- 2.28 “Plan of Governance” or “POG” means that certain Plan of Operation and Governance approved by the Township on April 22, 2013, pursuant to the Aggregation Statute.
- 2.29 “Point of Delivery” means the point specified by the Electric Utility at which the Supplier must deliver the Full-Requirements Electricity Supply to the Electric Utility for distribution to Participating Customers.
- 2.30 “Price” means the fixed price expressed in cents per kilowatt hour at which the Supplier will provide the Services as set forth in Exhibit C to this Agreement.
- 2.31 “Program” means the electricity aggregation program operated by the Township in accordance with the Aggregation Statute and authorized by the Aggregation Ordinance, to aggregate residential and small commercial retail electrical loads located within the unincorporated portion of the Township for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Full-Requirements Electricity Supply and related Services.
- 2.32 “Program Implementation Services” means those portions of the Services described in Section 4.2 of this Agreement, including all subsections of Section 4.2.
- 2.33 “Requirements of Law” means the Aggregation Ordinance, the Aggregation Statute, the Plan of Governance, the rules and regulations of the ICC and Illinois Power Agency (including the ICC Order in Case No. 11-0434 issued on April 4, 2012), the rules, regulations and tariffs applicable to the Electric Utility and the Independent System Operator, and all other applicable federal, state, and local laws, orders, rules, and regulations, all as may be hereinafter duly amended.
- 2.34 “Retail Electric Supplier” or “RES” means an "alternative retail electric supplier" as that term is defined in Section 16-102 of the Public Utilities Act, 220 ILCS 5/16-102.

2.35 “Services” means the Full-Requirements Electricity Supply Services, Program Implementation Services, Enrollment Services, Billing Services, and Compliance Services provided in Article 4 of this Agreement.

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

2.37 “Supplier” means Constellation NewEnergy, Inc. and the lawful successor, transferee, designee, or assignee thereof.

2.38 “Tariffed Service” means the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 which includes ComEd's electricity supply charge, plus ComEd's transmission services charge, plus ComEd's purchased electricity adjustment.

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

2.40 “Township” means the Township of Palatine, Cook County, Illinois.

2.41 “Withdrawing Customer” means a customer defined in Section 4.3.6 of this Agreement.

ARTICLE 3 PROGRAM RESPONSIBILITIES

3.1 Township Responsibilities.

3.1.1 Customer Information. The Township shall, with the assistance of the Supplier, pursuant to the Requirements of Law, obtain the Customer Information from ComEd.

3.1.2 Notices and Customer Information from ComEd. The Township shall promptly forward to Supplier the Customer Information received from ComEd and each Party will promptly provide to the other Party any notices received by that Party from ComEd concerning the accounts of Eligible or Participating Customers.

3.1.3 Submittals to ComEd. The Township shall, with the assistance of Supplier, submit to ComEd (a) the "Government Authority Aggregation Form", (b) a list of Eligible Customers who are not Participating Customers because they have elected to opt out of the Program, and (c) a list of all Participating Customers.

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

3.1.5 No Township 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 Township 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 Township is not responsible to provide, and shall not be liable to the Supplier or any Eligible Customer for any failure to provide, any Services pursuant to this Agreement.

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

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

3.2.4 That all information provided by The Supplier to Township or any of its agents relating to this Agreement in any way shall be true and accurate in all respects at all times.

ARTICLE 4 SUPPLIER SERVICES

4.1 Full Requirements Electricity Supply: 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 delivered to the Electric Utility at the Delivery Point sufficient Energy to provide continuous Full-Requirements Electricity Supply to all Participating

Customers. The Township acknowledges that the Electric Utility, and not the Supplier, is responsible for the distribution of the Full-Requirements Electricity Supply to the Participating Customers after delivery by the Supplier to the Delivery Point, and that Supplier does not take responsibility for the distribution of the Full-Requirements Electricity Supply to Participating Customers after the Supplier provides Full-Requirements Electricity Supply to the Point of Delivery.

4.1.1.4.2 Failure of Delivery. Supplier acknowledges and agrees that if the Supplier fails to comply with any requirement related to the Full-Requirements Electricity Supply to the Participating Customers pursuant to this Agreement, including without limitation if Supplier fails to schedule all or part of the Full-Requirements Electricity Supply 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 4.1.3 of this Agreement, the Supplier shall receive the Price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation, except that the Supplier may impose an early termination fee on Withdrawing Customers pursuant to Section 4.3.6 of this Agreement. The Township acknowledges that the Price does not include sales or other consumer-based taxes applicable to Participating Customers or other taxes that are not applicable to the Supplier

4.1.3 Price Guarantee. If the rates for Tariffed Service to a particular rate class are set below the Price during the Term of this Agreement, Seller will either (a) provide the Services to Participating Customers in such class at a price equal to the rate for Tariffed Services, or (b) after taking all steps necessary to return all Participating Customers to the Electric Utility, terminate this Agreement without damages or early termination fees to either Party. The Supplier may adjust the pricing monthly; reducing the following month's Price when the previous month's Price is higher than the Tariff Service rate. Notwithstanding the foregoing, termination under this Section 4.1.3 may be avoided if the Township, determines that the Aggregation Program should remain in place at the Price without the need to match. In such an event, the Parties shall enter into a written agreement and the Township shall not waive any rights set forth herein by allowing the Price to remain in place without the need to match unless the Township specifically agrees in writing.

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

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

4.2.1.1 Opt-Out Notices. Supplier, at its own expense, shall be fully responsible to prepare and mail form Opt-Out Notices to all Eligible Customers as required pursuant to the Requirements of Law. Opt-Out Notices must include all information required pursuant to the Requirements of Law, including without limitation including the terms and conditions of participation in the Program, the cost to the 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 Township prior to mailing by the Supplier. In addition to the Opt-Out Notices, the Supplier will provide Participating Customers with terms and conditions for the provision of Full Requirements Electric Supply to those Participating Customers, which terms and conditions shall comply with and accurately reflect all of the requirements of this Agreement and the Requirements of Law and shall be substantially similar to the form attached in Exhibit F.

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

4.2.1.3 Toll Free 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. Supplier will be required to support Spanish speaking residents and customers with disabilities.

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

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

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

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

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

4.3.3 Term of Enrollment. Participating Customers who do not opt out of the Program shall be enrolled in the Program by the Supplier, and shall remain enrolled in the Program until the end of the Term, unless the Agreement is terminated pursuant to its terms or the Participating Customer withdraws from the Program pursuant to Section 4.3.6 of this Agreement

4.3.4 Direct Access Service Request. The Supplier shall submit a direct access service request to ComEd for each Participating Customer in compliance with the "standard switching" subsection of Rate RDS - Retail Delivery Service, in order to allow Full-Requirements Electricity Supply to commence.

4.3.5 Payment of Switching Fees. The Supplier shall reimburse Participating Customers for any switching fee imposed by the Electric Utility related to the enrollment of a Participating Customer in the Program within 30 days of receiving notice of such switching fee. The Supplier shall not be responsible to pay any switching fees imposed on Participating Customers who switch service from an alternative retail electric supplier.

4.3.6 Withdrawal by a Participating Customer. For Participating Customers who notify the Supplier after the completion of the Opt-Out Period that the Participating Customer desires to withdraw from the Program ("Withdrawing Customer"), the Supplier must, at the direction of the Participating Customer, drop the Participating Customer from the Supplier's Full-Requirements Electricity Supply on the next available meter read, which will result in restoring the Participating Customer to Tariffed Service. The Supplier may assess an early termination fee of \$0.00 to Withdrawing Customers, provided that no early termination fee may be assessed to Withdrawing Customers who notify the Supplier that they are withdrawing because they are moving out of the unincorporated portion of the Township.

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. Supplier must promptly and courteously address customer service inquiries in a manner that meets or exceeds the ICC requirements for the operation of call centers.

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

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

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

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

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

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

- Rate BESH – Basic Electric Service Hourly Pricing
- Rate RDS – Retail Delivery Service (collectively, the “Special Billing Customers”).

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

4.3.9.1 Any Eligible Customer within the Township that moves to a new location within the unincorporated portion of the Township;

4.3.9.2 Any Eligible Customer that moves into an existing location within the unincorporated portion of the Township;

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

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

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

4.4.1 Billing Generally. Supplier shall confirm that billing to 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. The Township acknowledges and agrees that ComEd will bill Participating Customers

for the Price of the Full-Requirements Electricity Supply as part of its billing for the distribution of such supply, and that the Supplier shall not be responsible for billing Participating Customers

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

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

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

- 15,000 kWhs or less Delivery Class

4.5 Compliance Services. The Supplier shall assist the Township 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 Township may reasonably request from time to time.

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

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

ARTICLE 5

TERM

5.1 Term. This Agreement commences as of the Effective Date and is for a term of twelve (12) consecutive monthly billing periods starting from the initial meter read date designated by the Township in consultation with the Supplier in September 2013, and expires at the end of the last day of the 12th billing cycle for the Participating Customer(s) with the latest billing cycle (the "Term"). The Township and the Supplier may extend the Term for additional periods of time up to 3 years for each extension, by written agreement approved and executed by each Party (each an "Extended Term"). Nothing in this Article 5 related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority

related to this Agreement granted by the Township to the Supplier will continue beyond the Term or an approved Extended Term. Notwithstanding the provisions of this Section 5.1, if the rate for Tariffed Service falls below the Price during the Term, the Supplier may terminate this Agreement after returning Participating Customers to Tariffed Service as provided in Section 4.1.3 of this Agreement.

5.2 In the event this Agreement is not renewed or terminated for any reason, including expiration according to its terms, the Township may choose another RES or Retail Electric Supplier and Supplier shall allow all Participating Customers to be switched to the selected RES, or all Participating Customers shall be switched by the Supplier to service with ComEd in accord with the standard switching rules and applicable notices or as otherwise required by any applicable law or regulation.

ARTICLE 6 REMEDIES AND TERMINATION

6.1 Township's General Remedies. In addition to every other right or remedy provided to the Township under this Agreement, if the Supplier fails to comply with any of the provisions of this Agreement (for reason other than a Force Majeure Event pursuant to Section 7.1 of this Agreement or a Regulatory Event pursuant to Section 7.2 of this Agreement), then the Township 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 Township, subject to the limits of applicable federal or State of Illinois law, may take any one or more of the following actions:

- 6.1.1 Seek specific performance of any provision of this Agreement or seek other equitable relief, and institute a lawsuit against the Supplier for those purposes.
- 6.1.2 Institute a lawsuit against the Supplier for breach of this Agreement and, except as provided in Section 6.3 of this Agreement, seek remedies and damages as the court may award.
- 6.1.3 In the case of noncompliance with a material provision of this Agreement, declare this Agreement to be terminated in accordance with the following:
 - 6.1.3.1 The Township will give written notice to the Supplier of the Township'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 Township has not received a response from the Supplier, or if the Township does not agree with the Supplier's response or any remedy proposed by the Supplier, then the Township will conduct a hearing on the proposed termination. The Township 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 Township's intent to terminate this Agreement.

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

6.1.3.3 The decision of the Township 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 Township's demand, must reimburse the Township for all costs and expenses incurred by the Township, including, without limitation, reasonable attorneys' fees, in connection with that termination of rights or with any other enforcement action undertaken by the Township.

6.2 Actions on Termination or Expiration of this Agreement. This Agreement shall terminate upon the expiration of the Term or an Extended Term, as applicable (with the understanding that the expiration of service for any particular Participating Customer will be tied to that customer's billing cycle), or the Township's termination of the Agreement pursuant to Section 6.1 or 4.1.3. Upon termination as a result of expiration of the Term (absent agreement upon an Extended Term), or upon termination as a result of expiration of an Extended Term, as applicable, Supplier shall return Participating Customers to Tariffed Service upon expiration of the Term or Extended Term, as applicable, on the first available meter read. In the event of the Township's termination of the Agreement prior to the end of the Term or Extended Term pursuant to Section 6.1.c, as applicable, Supplier shall return Participating Customers to Tariffed Service on the second available meter read in order to provide the opportunity for Participating Customers to identify alternate sources of electrical supply prior to returning to Tariffed Service. Participating Customers shall not be liable for any termination fee as a result of such termination or expiration in accordance with the preceding sentences of this Section 6.2. Supplier shall not be responsible to any Participating Customer for any damages or penalties resulting from the return to Tariffed Service, including claims relating to the Tariffed Service price being higher than the Price herein.

6.3 Limitation of Liability. Except for the Supplier's failure to provide Full-Requirements Electricity Supply to Participating Customers or the disclosure of Customer Information in violation of the Requirements of Law, or as otherwise specifically provided herein, in no event will either Party be liable to the other Party under this Agreement for incidental, indirect, special, or consequential damages connected with or resulting from performance or non-performance of this Agreement, irrespective of whether such claims are based upon breach of warranty, tort (including negligence of any degree), strict liability, contract, operation of law or otherwise.

ARTICLE 7
FORCE MAJEURE EVENTS AND REGULATORY EVENTS

7.1 Force Majeure Events. The Supplier shall not be held in default under, or in noncompliance with, the provisions of the Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by a "Force Majeure Event," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, or other event that is reasonably beyond the Supplier's ability to anticipate or control. Non-compliance or default attributable to a Force Majeure Event shall be corrected within a reasonable amount of time after the Force Majeure Event has ceased.

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

- a. Illegality. It becomes unlawful for a Party to perform any obligation under this Agreement due to the adoption of, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.
- b. Adverse Government Action. A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially and adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determines to be unreasonable or (C) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure Event.
- c. New Charges. Any material increase in generation, energy, or utility taxes or charges enacted and effective after the Effective Date of this Agreement. These charges would not be unique to Supplier's customers, but would apply to all customers in ComEd's rate classifications. The imposition of such tax or charge after the Effective Date of this Agreement is not subject to automatic pass-through in Price, but would only constitute a Regulatory Event if the imposition of the charge materially and adversely affects Supplier's ability to perform.
- d. Occurrence of Regulatory Event. **Within ten (10) days of** the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties shall enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to this Agreement, within thirty (30) days or such other period as the Parties may agree in writing, the adversely affected Party shall have the right, upon ten (10) days prior written notice, to terminate and close out its obligations under this Agreement.

ARTICLE 8
INDEMNIFICATION AND INSURANCE

8.1 Indemnification. The Supplier shall indemnify and hold harmless the Township, its officials, officers, employees, agents, and attorneys, from and against any third party injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising from the Supplier's provision of the Services, except to the extent caused by the sole negligence of the Township. 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 Township shall give the Supplier timely written notice of its obligation to indemnify and defend the Township after the Township'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 Township. Nothing herein shall be construed to limit the Supplier's duty to indemnify the Township by reference to the limits of insurance coverage described in this Agreement.

8.2 Insurance. Contemporaneous with the Supplier's execution of this Agreement, the Supplier shall provide certificates of insurance, all with coverages and limits as set forth in Exhibit D to this Agreement. For good cause shown, the Township Administrator, or his 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 Township Administrator, or his designee may impose in the exercise of his sole discretion. Such certificates and policies shall be in a form acceptable to the Township 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 Township. The Supplier shall, at all times during the term of this Agreement, maintain and keep in force, at the Supplier's expense, the insurance coverages provided above.

ARTICLE 9
CONFIDENTIAL INFORMATION

9.1 Confidential and Proprietary Information. Notwithstanding anything to the contrary set forth herein, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature. The Parties agree that any information disclosed by a Party and designated as proprietary and confidential shall only be disclosed to those officials, officers, employees, representatives, and agents of the other Party that have a need to know in order to administer and enforce this Agreement. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to a Party's corporate structure and affiliates, marketing plans, financial information unrelated to the calculation of the Price or rates pursuant to the Requirements of Law, or other information that is reasonably determined by a Party to be competitively sensitive. A Party may make proprietary or confidential information available for inspection but not copying or removal by the other Party's representatives. Compliance by the Township with the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. ("Illinois FOIA"), including compliance with an opinion or directive from the Illinois Public Access Counselor or the

Illinois Attorney General under the Illinois FOIA, or with a decision or order of a court with jurisdiction over the Township, shall not be a violation of this Section.

9.2 Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than the Supplier's confidential information, will be and remain the sole property of the Township. The Supplier must promptly deliver all Data to the Township at the Township's request. The Supplier is responsible for the care and protection of the Data until that delivery. The Supplier may retain one copy of the Data for the Supplier's records subject to the Supplier's continued compliance with the provisions of this Agreement.

9.3 Limitations on Customer Information. Both Parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-122, and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH.

9.4 Limitations on Customer Information. Both Parties acknowledge and agree that the Customer Information is subject to, and must be maintained in compliance with, the limitations on disclosure of the Customer Information established by the Requirements of Law, including without limitation the Aggregation Statute, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-122, Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH, the ICC Order in Case No. 11-0434 issued April 4, 2012, and the provisions of ComEd's Tariff Rate GAP. Township shall warrant to ComEd that customer-specific information provided to the Township in accordance with the provisions of ComEd's Tariff Rate GAP shall be treated as confidential. To protect the confidentiality of Customer Information:

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

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

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

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

9.5 Proprietary Rights, Survival. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information. The obligations under this Article Nine shall survive the conclusion or termination of this Agreement.

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 Township:

Palatine Township
721 South Quentin Road, Suite 101
Palatine, Illinois, 60067
Attention: Paul Pioch, Township Administrator

To Supplier

Constellation NewEnergy, Inc.
Attn: Mass Market Group
Chase Building, 54th Floor
10 S. Dearborn
Chicago, IL 60603

With a copy to:

Bryan Mraz & Associates, PC
111 E. Irving Park Road
Roselle, Illinois, 60172
Attention: Laurence Mraz

With a copy to:

Constellation NewEnergy, Inc.
Attn: Legal Department
Chase Building, 54th Floor
10 S. Dearborn
Chicago, IL 60603

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

- a. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
- b. It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
- c. The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

- d. It has reviewed and understands this Agreement; and
- e. It, to the extent applicable, shall comply with all the Requirements of Law.

10.3 Supplier agrees that all information presented in its Response to Qualifications for Municipal Aggregated Electricity Supply For Member Communities of the Northern Illinois Municipal Electric Collaborate, dated November, 2012 are accurate and there have been no material changes to that information. Any exceptions are noted on attached exhibit and made part of this Agreement.

10.4 Entire Agreement. This Agreement and the response to qualifications referenced in 10.3, 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 both Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

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

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

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

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

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

10.10 Venue. Except as to any matter within the jurisdiction of the ICC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of 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.

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

10.12 No Waiver of Rights, Immunities and/or Privileges. Nothing in this Agreement shall be construed as an express or implied waiver of any rights, substantive or procedural and/or any common law and/or statutory immunities and/or privileges that the Township and/or any of its officials, officers, employees and/or agents may have under Federal or state law; such rights, immunities and privileges are expressly reserved.

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

10.14 Authority to Sign Agreement. Each Party warrants to the other Party that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of each Party warrants to the other Party that he/she is authorized to execute this Agreement in the name of the Party for which he/she is signing.

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

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

10.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

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

Supplier: Constellation NewEnergy, Inc.

Palatine Township:

Signed: _____

Signed: Sharon Langlotz-Johnson

Printed/Typed Name: David T. Donat

Printed/Typed Name: Sharon Langlotz-Johnson

Title: Vice President

Title: Palatine Township Supervisor

Date: July 1, 2013

Date: 6/28, 2013

Attest: Shwe Soliz
Shwe Soliz, Contract Analyst

Attest: Paul Pioch
Paul Pioch, Township Administrator

EXHIBIT A
BID PACKAGE

EXHIBIT B
BID RESPONSE

EXHIBIT C:

PRICE

Opt-Out Program:

Residential Customer Class

Price: 5.144¢ per KWh

Commercial Customer Class

Price: 5.144¢ per KWh

The above pricing includes 0% renewable power

Opt-In Program:

Residential Customer Class

Price: 5.213¢ per KWh – 100% Renewable

Commercial Customer Class

Price: 5.213¢ per KWh – 100% Renewable

Term: 12 months

Supplier will _____ / will not X make a civic contribution annually at the rate of \$0.001 per KWh for all usage consumed and paid for by participants of the Palatine Township Aggregation Program.

Termination Fees:

Residential - \$0

Commercial - \$0

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 or self-insurance shall evidence that coverage applies in the State of Illinois.

B Comprehensive Motor Vehicle Liability insurance or self-insurance 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 insurance or self-insurance (CGL)

a. with coverage written on an "occurrence" basis with limits no less than:

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit

Coverage is to be written on an "occurrence" bases.

Coverages shall include:

Broad Form Property Damage Endorsement

Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

b. with coverage written on a "claims made" basis with limits no less than:

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit

Coverage is to be written on an "claims made" bases.

Coverages shall include:

Broad Form Property Damage Endorsement

Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

D.

E Umbrella Policy. Any excess or umbrella policy maintained by Supplier must provide excess coverage over underlying Supplier's insurance or self-insurance program on a following-form basis such that when any loss covered by the primary policy (see below) exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

F Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:

Worker's Compensation

Professional Liability

Each such additional Insured endorsement shall identify Owner as follows: Palatine Township, including its Board members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives (collectively, the "Additional Insured").

Notwithstanding any provision herein to the contrary, Supplier's CGL and excess/umbrella coverages shall be primary with respect to any insurance and/or self-insurance maintained by the Additional Insured and shall state that it shall apply separately to each insured against whom claim is made or suit is brought. Any insurance and/or self-insurance maintained by the Additional Insured shall be in excess of Supplier's insurance and shall not contribute with it regarding claims that come about from this agreement.

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