

10/31/2008
10/29/2008
10/9/2008

57-R-08

A RESOLUTION

**Authorizing the City Manager to Sign a
Contract with a Party to be Named Later for
Electrical Power Supply**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, a Contract between the City of Evanston and Integrys Energy Services or MidAmerican Energy Company, based on proposed actionable pricing as provided on November 10, 2008, for electrical power supply for twenty four (24) months beginning December 1, 2008, in an amount not to exceed Three Million, Eighty-Five Thousand Dollars (\$3,085,000.00). Such Contract shall be in substantial conformity with the documents marked as Exhibit Exhibit A1 (Integrys), and Exhibit A2 (MidAmerican) attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the said Contract as determined to be in the best interests of the City.

SECTION 3: That this Resolution 57-R-08 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Lorraine H. Morton, Mayor

Attest:



Rodney Greene, City Clerk

Adopted: November 10, 2008

EXHIBIT A1

**Proposed Electricity Supply Agreement between
the City of Evanston and Integrys Energy Services**

Electricity Supply Agreement

The City of Evanston Illinois, an Illinois municipal corporation, with offices located at 2100 Ridge Avenue, Evanston, Illinois 60201 (“Customer”), and Integrys Energy Services (“Supplier”), a _____ with offices located at _____ hereby enter into this Electricity Supply Agreement (“Agreement”), effective as of October _____, 2008. (the “Effective Date”) Customer and Supplier hereby agree as follows:

A. DEFINITIONS.

“Account Number” means the number assigned to each of the Accounts by ComEd.

“Accounts” means those ComEd account(s) set out in Attachment A to this Agreement.

“Affected Party” means a party whose performance of an obligation hereunder is prevented by an event of Force Majeure.

“Affiliate” of a Party means any person or entity controlled by, that controls, or that is under common control with, such Party. The term “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Party, whether through the ownership of voting securities, by contract, or otherwise.

“Ancillary Service Charges” means for any billing period the applicable charges for ancillary services associated with the electricity delivered to Customer hereunder as set forth in the PJM Open Access Transmission Tariff (“OATT”), including without limitation congestion charges.. Ancillary Service Charges are a fixed price component, but subject to change pursuant to Section I of this Agreement and therefore subject to change during the term of this Agreement.

“Authorized Authority” shall have the meaning set out in Section I of this Agreement.

“Capacity Charges” mean the capacity charges reasonably calculated by Supplier to reflect Supplier’s capacity costs associated with the electricity delivered to Customer, which charge is fixed as presented on Attachment B. Notwithstanding Section I, the Parties agree that Seller shall not pass through to Buyer (a) any increase or decrease in current capacity tariff charges or (b) other increase or decrease in Seller’s cost to provide capacity resulting from a change in or change in interpretation or administration of current tariffs, laws, regulations, or other requirements of a utility, RTO/ISO, FERC, or other transmission providers, as applicable.

Notwithstanding the foregoing, Seller may pass through to Buyer (i) any increase or decrease in Seller's cost to provide capacity resulting from new or additional capacity tariff charges and (ii) other increase or decrease in Seller's cost to provide capacity resulting from a new or additional tariff, law, regulation, or other requirements of a utility, RTO/ISO, FERC, or other transmission providers, as applicable.

"ComEd" means the Commonwealth Edison Company which is the local electricity distribution company that owns the electric distribution system required for the delivery of electricity to the Account(s).

"ComEd Charges" mean charges for delivery services and other ComEd costs, charges, and fees associated with Customer's use of ComEd's distribution system which charges may include, without limitation, meter rental and installation charges, distribution facilities charges, a customer charge, instrument funding charges, franchise fees, lighting charges, public programs, and decommissioning charges. ComEd Charges are a pass-through and may therefore change during the term of this Agreement.

"Delivery Point" means existing and future points of interconnection between the PJM-controlled grid and ComEd's transmission system or distribution system.

"Effective Date" means the date first written above.

"End Date" means the Account's first meter read on or after December 1, 2010.

"FERC" shall mean the Federal Energy Regulatory Commission.

"Force Majeure" means an event that prevents a Party from performing its obligations hereunder, that is not within the reasonable control of the Party affected by such event ("Affected Party"), and that by the exercise of due diligence, the Affected Party is unable to overcome in a commercially reasonable manner. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by ComEd or PJM; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority. Force Majeure does not include changes in the market for electricity that increase the cost to Supplier of obtaining the electricity necessary to perform Supplier's obligations hereunder or that allow Customer to obtain electric service at a cost lower than the cost to obtain such service from Supplier pursuant to this Agreement.

“Holdover Rate” shall mean that rate set out in Attachment B hereto, which is payable hereunder by Customer for any electricity supplied to Customer by Supplier pursuant to this Agreement during a Holdover Term.

“Holdover Term” means that period of time after the End Date for any of the Accounts during which Supplier continues to supply electricity to Customer hereunder.

“Law” means with respect to the subject matter of this Agreement, any applicable federal or Illinois law, rule, regulation, ordinance, statute, judicial decision, or administrative order.

“Line Loss Charges” mean the charges imposed by ComEd and by PJM and payable by Supplier in connection with the supply of electricity to Customer in accordance with this Agreement. Line Loss Charges are a fixed price component, but subject to change pursuant to Section I.

“OATT” means Open Access Transmission Tariff

“Party” means Customer or Supplier, as applicable.

“Parties” means Customer and Supplier.

“PJM” means the PJM Interconnection, LLC or other entity approved by the Federal Energy Regulatory Commission or a successor regulatory body that provides transmission service within ComEd’s service territory.

“RTO/ISO” means a that Regional Transmission Operator or Independent System Operator that transmits energy delivered hereunder to the Delivery Point.

“Start Date” means, with respect to each of the Accounts, December 1, 2008 or the first date thereafter on which Supplier first supplies electricity to such Account.

“Supplier Price” means the price for each kilowatt hour of electricity purchased pursuant to this Agreement, as set forth on Attachment B. As detailed in these definitions, the Supplier Price includes Line Loss Charges, Ancillary Services Charges, Capacity Charges and Transmission Service Charges associated with the electricity purchased pursuant to this Agreement.

“Taxes” mean all applicable federal, state, municipal and other taxes imposed either on Customer or that Supplier is required to collect from Customer in Supplier’s function as a provider of electricity to Customer. All Taxes invoiced to the Customer under this Agreement will be set out on the invoice as a separate line item.

“Renewable Energy Certificates” or “RECs” means certificates evidencing the purchase of the Environmental Attributes and EA Reporting Rights associated with 1 megawatt-hour of electric energy generated by a generator of electrical energy that relies on a fuel/energy source that can be regenerated (“Renewable Energy Resource” which meets the GreenE/Center for Resource Solutions standard (*see* National Standard Version 1.5). “Environmental Attributes” means, in the generation of electrical energy, any and all fuel, emissions, air quality or other environmental characteristics (i) resulting from the generation of electrical energy or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such generation, or (ii) arising out of any law, rule or regulation; *provided, however*, such term shall exclude any and all state, federal, investment, or other tax credits or grants applicable to the Renewable Energy Resource. “EA Reporting Rights” means the right of the reporting person or entity to claim to any agency, authority or other party under any emissions trading or reporting program, public or private, that it has title to the Environmental Attributes.

“Transmission Service Charges” means all charges for transmission service (other than for Ancillary Service Charges, which will be invoiced separately) as identified in the applicable OATT Tariff for the provision of transmission service by PJM.

B. ELECTRICITY SUPPLY.

1. **Full Requirements Purchase.** Beginning on the Start Date for each Account and ending on the End Date for such Account, Supplier will supply and Customer will purchase Customer's full requirements for electricity for the Accounts listed in Attachment A, at the Price set out in Attachment B, plus applicable charges for the RECs sold hereunder (which are also shown on Attachment B), ComEd Charges, and Taxes, which ComEd Charges and Taxes will be passed through to Customer without margin or mark-up. All of the foregoing charges are set out in Attachment B.

2. **Renewable Energy Certificates.** Supplier also will provide Customer with Renewable Energy Certificates, in a quantity equal to ___ percent (___%) of the electric energy supplied to Customer under this Agreement each month during the term of this Agreement at the price for Renewable Energy Certificates set out in Attachment B. The energy generated by the Renewable Energy Resource and associated with the delivered Renewable Energy Certificates

shall be generated and physically metered within 6 calendar months before the applicable calendar year through 2 months after the applicable calendar year. Customer agrees and acknowledges that it desires to purchase RECs on voluntary basis, the RECs delivered hereunder are not for compliance in any mandatory renewable energy portfolio standard or similar law, rule or regulation, nor relating to the sale of electricity from the Renewable Energy Resource (defined below) generating the RECs. As requested by Customer, the price for the RECs and will be invoiced as part of the electricity Pricing on the Confirmation and will be separately shown on such invoice. The sale and purchase of RECs shall be effectuated by Supplier retiring the RECs on behalf of Customer. Upon such retirement, Supplier shall have delivered the RECs to Customer, and Customer shall have title to and rights to make all claims relating to such delivered RECs. Upon request by Customer, Supplier shall deliver evidence to Customer demonstrating that Supplier has retired the RECs on behalf of the Customer. Such delivery shall be made no later than 90 days after the end of the calendar year. For each calendar year, such retirement shall only include RECs based on metered usage through the last meter read occurring in the applicable calendar year. Notwithstanding anything to the contrary herein, the Customer shall not use *inter alia* Supplier's logos, service marks, trademarks or trade, brand or corporate name ("Corporate Marks") without the prior written consent of Supplier in each instance, including, without limitation, use within any advertising, marketing materials, website, press release, or sales presentations; provided, however, without limiting the generality of the foregoing prohibition, each Party may issue press releases and other public messages regarding its business affairs and otherwise, including a general description of the Agreement that is not contrary to the foregoing limitation relating to Corporate Marks. Customer shall comply with all Law pertaining to any claims to *inter alia* the media, public, and consumers relating to the RECs purchased hereunder and Customer support of generation from renewable energy resources, and shall indemnify and hold harmless Supplier with respect to the Customer's activities with respect to any claims relating to the RECs. .

3. **Delivery of Electricity.** Supplier shall deliver electricity to Customer at the Delivery Point, and upon delivery, risk of loss and title shall transfer to Customer.

4. **Variance in Customer's Consumption of Electricity.** Customer shall use reasonable efforts to notify Supplier of any expected material change in the volume or pattern of

Customer's consumption of electricity at least thirty (30) days in advance of any such material change.

C. REQUIRED INFORMATION AND AUTHORIZATIONS. Customer shall designate Supplier to ComEd as an authorized recipient of Customer's current and historical energy billing and usage data. Customer hereby authorizes Supplier to take such actions it deems necessary to enroll the Account(s) with ComEd as Accounts to be served by Supplier and otherwise to meet its obligations under this Agreement. Customer shall take any actions and execute any documents as Supplier shall reasonably request in this regard. Customer shall also provide to Supplier the following information: Customer's ComEd account numbers and meter numbers, meter read data, rate class, electric usage, Customer's formal legal name, addresses, telephone number, facsimile number, and other information reasonably requested by Supplier from time to time, including without limitation, facility descriptions, operation information, and other information concerning the Accounts. Customer shall promptly notify Supplier in writing of any changes in any information provided concerning the Accounts, including without limitation (i) any change to the name associated with any of the Accounts; and (ii) any change in the Account Number associated with any of the Accounts.

D. PRICE, BILLING AND PAYMENT.

1. **Price.** Customer shall pay Supplier for each kilowatt-hour of electricity delivered to Customer, at the Supplier Price set forth on Attachment B hereto. Customer shall also pay Supplier any additional amounts shown on each invoice for ComEd Charges and Taxes.

2. **Billing and Payment.** Supplier shall, on a monthly basis, provide Customer with a single consolidated bill for all services provided under this Agreement to all of the Accounts for the immediately preceding billing period during the term of this Agreement and during any Holdover Term. Customer shall make payments to the address specified in Attachment B or to such other address for payment specified in a notice to Customer from Supplier from time to time during the Term of this Agreement. Payment shall be made, and any late payments shall bear interest, pursuant to the provisions of the Illinois Local Government Prompt Payment Act [50ILCS505/1 et. seq.]. Supplier reserves the right to adjust its billing cycle from time to time. Customer acknowledges that Supplier's ability to calculate the amount due from Customer is dependent on Supplier's receipt of certain information from ComEd or PJM. If Supplier does

not receive such information in time to prepare Customer's invoice, Supplier shall have the right to invoice Customer based on estimated meter readings or other reasonably estimated information. In such event, any differences between Supplier's estimate and the information supplied by ComEd or PJM will be shown on Customer's invoice for the next billing cycle after the billing cycle in which Supplier receives the necessary information from ComEd or PJM.

3. **Billing Disputes.** Customer will be deemed to have waived any billing disputes unless presented to Supplier in writing within twenty-four (24) months of the date on which Customer receives Supplier's invoice. All other claims Customer may have related in any way to this Agreement or the products and services provided hereunder will be deemed waived if Customer fails to notify Supplier of such claims within twenty-four (24) months after termination or expiration of this Agreement. Notwithstanding the foregoing, Seller may rebill based on post-period audits or adjustments made by ComEd or PJM.

4. **ComEd Charges.** Customer shall have full responsibility for payment of any existing amounts owed to ComEd for service provided before the Start Date. To the extent that Customer fails to timely remit payment to Supplier, Supplier shall have the right to delay Supplier's payments that are due and owing to ComEd until Supplier receives payment from Customer. Customer acknowledges that its failure to timely remit payment to Supplier of amounts due and owing to ComEd may result in ComEd requesting that Customer provide a deposit and/or ComEd's suspension of service to Customer. If Supplier fails to remit timely payment of amounts due and owing to ComEd, other than due to Customer's failure to timely remit payment to Supplier, then Supplier will indemnify and hold Customer harmless from all costs and losses associated with such failure.

E. **TERM.** The term of this Agreement will commence on the Effective Date and, unless terminated earlier as otherwise provided in this Agreement, will continue thereafter until the End Date, or if the End Date differs for different accounts, then the term of this Agreement will end on the latest occurring End Date or, if Supplier continues to supply electricity to Customer during a Holdover Term, until terminated by either Party upon thirty (30) days written notice to the other. With respect to each of the Accounts, the term of the Parties' obligations pursuant of this Agreement shall commence on the "Start Date" and end on the "End Date" for such Account, unless extended by the mutual written agreement of the Parties or as otherwise

provided in this Agreement (e.g. a Holdover Term). Supplier will use commercially reasonable efforts to begin service to the Accounts on December 1, 2008, but if Supplier is unable to enroll one or more of the Accounts by such date as a result of circumstances beyond Supplier's control (including Customer's failure to notify ComEd that it has selected Supplier as its supplier or any acts or omissions of ComEd or Customer), the Start Date(s) will occur on the next regularly scheduled ComEd meter read date in the month and year following successful enrollment of such Account(s). In such event, Supplier, in its discretion, will have the right, but not the obligation, upon written notice to Customer to extend the End Date to reflect the delay in the start of Supplier's supplying electricity to Customer.

Any notice period in this Agreement to the contrary notwithstanding, if Customer terminates the Agreement in accordance with its terms, such termination shall become effective at the later of the applicable termination date or the next regularly scheduled meter read cycle date at which Supplier is able to return Customer to being served by ComEd or any alternative supplier elected by Customer. Nothing in this Agreement shall be deemed to require or otherwise obligate Supplier to offer to extend the term of this Agreement.

F. CREDITWORTHINESS. From time to time each Party will provide the other Party with reasonable information as requested to complete a credit review. If at any time a Party experiences any material adverse change in its financial condition which, in the reasonable opinion of the other Party, will materially adversely affect the first Party's ability to perform its obligations under this Agreement, or if Customer has made two (2) or more late payments, the other Party will have the right to require that the Party experiencing the material adverse change in its financial condition, or Supplier will have the right to request the same of Customer if Customer has made two (2) or more late payments, post security or make other credit arrangements satisfactory to the other Party in its reasonable discretion (which may include without limitation, making a cash deposit, posting a letter of credit at a financially sound bank or other financial institution, a parental guaranty, or prepaying Supplier for electricity supplied under this Agreement) or to increase or supplement security or other credit arrangements previously put in place, in any such circumstance to ensure prompt performance by each Party of its obligations under this Agreement. Each Party will provide the requested security or credit arrangements, including any increase thereof, within five (5) days of the other Party's request.

G. DEFAULT.

1. **Events of Default.** An "Event of Default" means any one of the following: (i) Customer's failure to make, when due, any payment required under this Agreement if not paid within five (5) business days after notice from Supplier that payment was not made when due; or (ii) any representation or warranty in this Agreement made by a Party proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement, if not cured within five (5) business days after written notice from the other Party; or (iii) either Party fails to provide additional security or credit arrangements as provided in this Agreement; (iv) Supplier fails to take all steps necessary to ensure delivery of electricity to Customer, including without limitation failure to make when due any payment required in connection with the purchase by Supplier of electricity to be delivered to Customer; (v) except to the extent excused by Force Majeure, the failure by a Party to perform any material obligation set forth in this Agreement where, in circumstances such failure is curable, it is not cured within three (23) business days after written notice thereof; (vi) either Party terminates this Agreement (or service to certain Accounts) for any reason except for a termination resulting from an Event of Default committed by the other Party; (vii) Supplier fails to sell and schedule for delivery, or Customer fails to purchase and receive electricity in accordance with this Agreement; or (viii) a Party: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (c) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it; (d) otherwise becomes bankrupt or insolvent (however evidenced); or (e) is unable to pay its debts as they fall due.

2. **Remedies upon Default.** If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may, in its discretion, at any time, terminate this Agreement in whole upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date"). If this Agreement is terminated, in whole or in part, pursuant to this Section, the Non-Defaulting Party will in good faith calculate a termination payment as set forth below, and the Defaulting Party shall pay such amount following receipt of notice of such amount as provided herein. The Parties acknowledge

and agree that any termination payment under this Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect.

a. If Customer terminates this Agreement due to the default of Supplier, Supplier will pay Customer the following early termination payment: [Market Value plus Costs] minus Contract Value, only if the Market Value plus Costs is greater than the Contract Value.

b. If Supplier terminates this Agreement due to the default of Customer, Customer will pay Supplier the following early termination payment: [Contract Value plus Costs] minus Market Value, only if the Contract Value plus Costs is greater than the Market Value.

c. For purposes of this Section, "Market Value" means the amount, as reasonably determined by the Non-Defaulting Party as of the Early Termination Date, that a bona fide third party would pay for the Remaining Anticipated Usage at current market prices. In determining "Market Value", the Non-Defaulting Party may consider, among other things, quotations from leading suppliers in the wholesale energy industry, the Non-Defaulting Party's internally developed forward price valuations, and other bona fide offers from either third parties or Affiliates of the Non-Defaulting Party, all as commercially available to the Non-Defaulting Party and adjusted for the length of the remaining Term and differences in transmission costs, volume, and other factors, as the Non-Defaulting Party reasonably determines. "Costs" mean brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by, or on behalf of, the Non-Defaulting Party in terminating, liquidating, or obtaining any arrangement pursuant to which it has hedged its obligations, and attorneys' fees, expenses and costs, if any, incurred in connection with enforcing its rights under this Agreement. "Remaining Anticipated Usage" means the amount of electricity (in kWh), as reasonably determined by the Non-Defaulting Party, that would have been used by each Account covered by the termination during the remaining term of this Agreement had it not been terminated early.

H. CERTAIN RIGHTS AFTER TERMINATION OR EXPIRATION. If following termination or expiration of this Agreement the Accounts remain designated by ComEd as being served by Supplier, Supplier may, consistent with Law and in its sole discretion, either (i) continue to serve such Accounts during a Holdover Term or (ii) during a Holdover Term that is not due to a negligent or willful omission or wrongful act of Supplier, move such Accounts to the then applicable ComEd tariff service. In either case, Supplier shall have the right to pursue all additional remedies available at law or in equity, unless the Accounts remain designated by ComEd as being served by Supplier due to a negligent or willful omission or wrongful act of Supplier in which event Customer shall have the right to pursue all additional remedies available at law or in equity and associated with electricity being supplied by Supplier during such Holdover Term. The Supplier Price payable during any Holdover Term is set out in Attachment B, unless the Accounts remain designated by ComEd as being served by Supplier due to a negligent or willful omission or wrongful act of Supplier, in which event the Supplier Price during any Holdover Term shall be remain the price shown on Attachment B for the period before the commencement of the Holdover Term. This Agreement will continue to govern the provision of service during any Holdover Term. Either Party may terminate a Holdover Term at any time upon thirty (30) days advance written notice to the other or upon notice delivered pursuant to such other time period required by Law, whichever is longer. Any such termination shall be effective as of the next meter read cycle date with respect to each Account. If Supplier so requests, Customer will cooperate with Supplier in its efforts to cease providing service to Customer after termination or expiration of this Agreement, whether in whole or in part.

I. CHANGE IN TARIFF/LAW: Supplier's Price includes tariff charges that are set forth by the ComEd, PJM, the Federal Energy Regulatory Commission, and/or any other state or governmental agency having jurisdiction (each an "Authorized Entity"). Supplier may pass through to Customer, without markup, (i) any increase or decrease in such tariff charges or (ii) other increase or decrease in Supplier's cost to provide electricity that result from an addition to, a change in, or change in interpretation by an Authorized Entity of, or change in administration by an Authorized Entity of tariffs, operating protocols, laws, regulations, or other requirements of an Authorized Entity, as applicable. Any such addition to or increase in costs shall be Customer's obligation.

J. REPRESENTATIONS AND WARRANTIES. Each Party warrants and represents to the other the following: (i) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform under this Agreement; (iii) the execution, delivery and performance of this Agreement are duly authorized and do not violate any governing documents or any contracts to which it is a party or any laws, rules or regulations applicable to it, including without limitation laws or regulations concerning Supplier's authorization to supply electricity at retail in the State of Illinois; and (iv) there is no material event(s) or other agreement(s) which would impair that Party's right, authority or ability to execute this Agreement and otherwise consummate the transactions contemplated by this Agreement.

K. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF CUSTOMER. Customer warrants, represents and covenants that: (i) the data given and representations made concerning its Accounts are true and correct to Customer's reasonable knowledge; and (ii) Customer is the party of record on the Accounts.

L. FORCE MAJEURE. A Party's failure to perform its obligations, other than the obligation to make payments when due hereunder for electricity supplied to Customer by Supplier, as the result of an event of Force Majeure will be excused the duration of the event of Force Majeure, provided that: (i) to the extent reasonably possible, the Affected Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to, the nature and date of the occurrence and the expected duration of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the Affected Party uses commercially reasonable efforts to remedy its inability to perform. If the event of Force Majeure continues for more than thirty (30) days, then the Party whose performance is not prevented by the event of Force Majeure will have the right to terminate this Agreement by written notice to the Affected Party delivered no less than fifteen (15) days before the termination date.

M. LIMITATIONS OF LIABILITY. Notwithstanding any other provision of this Agreement to the contrary, the entire liability of each Party for any and all claims, losses, expenses (including attorneys' fees and court costs), damages, demands, judgments, causes of action or suits (collectively, "Claims") of any kind arising from or relating to this Agreement,

including any causes of action in contract, tort, strict liability or otherwise, will be limited to direct actual damages only, subject in all cases to an affirmative obligation on the part of each Party to mitigate its damages. Furthermore, in no event will either Party be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits.

N. DELIVERY SERVICE. Customer acknowledges and agrees that ComEd is responsible for the electricity delivery system and interruptions in the delivery of electric service and that Supplier exercises no independent control over ComEd's facilities necessary for the delivery of electricity. Customer disclaims any and all right to damages from Supplier arising from any interruption in electric service caused in whole or in part by interruption, termination or deterioration of service on the ComEd's system unless such interruption results from Supplier's failure to make payments to ComEd. Customer will be responsible for paying to Supplier, and Supplier will be responsible for paying to ComEd, all distribution charges payable to ComEd in connection with the delivery of electric service provided pursuant to this Agreement.

O. SETOFF/NETTING. Supplier shall have the right to set-off and net against any amounts owed to it by Customer under this Agreement, including without limitation any early termination payment, any of the following amounts: (i) monies owed to Customer under this Agreement or under any other agreement between Supplier or any of Supplier's Affiliates, on the one hand, and Customer or any of Customer's Affiliates and (ii) any collateral or other financial assurance provided by Customer to Supplier under this Agreement.

P. DISCLAIMER. Customer acknowledges and agrees that no warranty, duty, or remedy, whether expressed, implied, or statutory, is given or intended to arise out of this agreement except as otherwise expressly stated herein, and **SUPPLIER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.**

Q. WAIVER AND SEVERABILITY. Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character.

R. ASSIGNMENT. Supplier may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (i) a bank, insurer, or other financial institution; or (ii) any person or entity (a) succeeding to all or substantially all of Supplier's assets or business or (b) into which Supplier is merged or otherwise combined or reorganized; provided that (i) it gives Customer sixty (60) days written notice of its intent to do so; (ii) the assignee satisfies in full Customer's credit requirements; and (iii) the assignee assumes in writing all of Supplier's obligations under this Agreement. Customer may assign any or all of its rights and obligations under this Agreement in their entirety or solely with respect to certain Accounts; provided (i) it gives Supplier sixty (60) days written notice of its intent to do so; (ii) the assignee satisfies in full Supplier's credit requirements and Supplier provides consent to such assignment; and (iii) the assignee assumes in writing all of Customer's obligations under this Agreement.

S. CONFIDENTIALITY. Customer agrees to keep all terms and provisions of this Agreement, including the pricing offered to Customer, confidential and not to disclose them to any third parties without the prior written consent of Supplier, except (i) as required by Law, including, but not limited to, the Illinois Freedom of Information Act and the Illinois Open Meetings Act, or (ii) otherwise in accordance with Customer's normal practice in providing copies of agreements to which Customer is a party upon request. Supplier will keep confidential all Customer identifying information and Account information that is not otherwise publicly available. Each Party shall have the right to disclose such information to its Affiliates or to its Affiliates' employees, agents, advisors, and independent contractors who have a need to know such information and who agree to hold such information in the strictest confidence. Supplier shall also have the right to disclose information respecting Customer, including this Agreement, to brokers, agents, consultants or other third parties that are representing Customer in the purchase of electricity. Furthermore, Supplier may make such other disclosures to third parties of information, including aggregate consumption data, provided the form of the information is such that Customer's identity cannot reasonably be identified.

T. CHOICE OF LAW; VENUE. This Agreement will be interpreted in accordance with the laws of the State of Illinois without giving effect to principles of conflicts of law. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in Cook County, Illinois, and each Party

hereto waives any right to object to venue in this regard. Each Party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury or to initiate or become a party to any class action claims in respect of any action, suit or proceeding directly or indirectly arising out of or relating to this agreement or the transactions contemplated by this Agreement.

U. NO THIRD PARTY BENEFICIARIES. This Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under this Agreement.

V. NOTICES. To be effective, all notices must be in writing delivered by facsimile, certified mail, return receipt requested, or by private courier, with a receipt provided, to the Parties at the following addresses:

To Supplier: Integrys Energy Services

To Customer: David Cook
Superintendent Facilities Management
City of Evanston
Suite 1450, Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

with a copy to:

Jewell Jackson
Purchasing and Contracts Manager
City of Evanston
Suite 4200, Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

A Party may change its address by providing notice of such change in accordance herewith. Notices shall be deemed to have been delivered upon actual delivery as evidenced by the receipt provided by the U.S. Postal Service or private courier. Notices sent by facsimile shall be deemed received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission.

W. ENTIRE AGREEMENT; SURVIVAL OF TERMS. This Agreement, including Attachments A and B , which are hereby incorporated herein and made a part hereof, comprises

the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, regarding such subject matter, and may not be contradicted by any prior or contemporaneous oral or written agreement. A facsimile copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. This Agreement may not be amended except by a written amendment executed by both Parties. The applicable provisions of this Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution, and with respect to any indemnification obligations under this Agreement. The section headings used in this Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Agreement.

X. RELATIONSHIP OF THE PARTIES. Supplier is an independent contractor under this Agreement. Except as otherwise explicitly provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below, to be effective as of the last of those two dates.

INTEGRYS ENERGY SERVICES

CITY OF EVANSTON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

Utility Account #	Service Address

ATTACHMENT B

Supplier Price:

1. Energy Rate:
2. Capacity Rate:
3. Ancillary Services Rate:
4. Transmission Service Rate:
5. REC Rate :

Holdover rate: variable market rate reasonably determined by Seller

EXHIBIT A2

**Proposed Electricity Supply Agreement between
the City of Evanston and MidAmerican Energy Company**

Electricity Supply Agreement

The City of Evanston Illinois, an Illinois municipal corporation, with offices located at 2100 Ridge Avenue, Evanston, Illinois 60201 ("Customer"), and MidAmerican Energy Company ("Supplier"), a _____ with offices located at _____ hereby enter into this Electricity Supply Agreement ("Agreement"), effective as of October _____, 2008. (the "Effective Date") Customer and Supplier hereby agree as follows:

A. DEFINITIONS.

"Account Number" means the number assigned to each of the Accounts by ComEd.

"Accounts" means those ComEd account(s) set out in Attachment A to this Agreement.

"Affected Party" means a party whose performance of an obligation hereunder is prevented by an event of Force Majeure.

"Affiliate" of a Party means any person or entity controlled by, that controls, or that is under common control with, such Party. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Party, whether through the ownership of voting securities, by contract, or otherwise.

"Ancillary Service Charges" means for any billing period the applicable charges for ancillary services associated with the electricity delivered to Customer hereunder as set forth in the PJM Open Access Transmission Tariff ("OATT"). Ancillary Service Charges are a Variable Price Component and therefore subject to change during the term of this Agreement.

"Capacity Charges" mean the capacity charges reasonably calculated by Supplier to reflect Supplier's capacity costs associated with the electricity delivered to Customer, which charge is included in the Supplier Fixed Price.

"ComEd" means the Commonwealth Edison Company which is the local electricity distribution company that owns the electric distribution system required for the delivery of electricity to the Account(s).

"ComEd Charges" mean charges for delivery services and other ComEd costs, charges, and fees associated with Customer's use of ComEd's distribution system which charges may include, without limitation, meter rental and installation charges, distribution facilities charges, a

customer charge, instrument funding charges, franchise fees, lighting charges, public programs, and decommissioning charges. ComEd Charges are a pass-through and may therefore change during the term of this Agreement.

“Congestion Charges” mean a charge reflecting the cost associated with transmission congestion, which charge is included in the Supplier Fixed Price.

“Delivery Point” means existing and future points of interconnection between the PJM-controlled grid and ComEd's transmission system or distribution system.

“Effective Date” means the date first written above.

“End Date” means that date which occurs twenty-four (24) months after the Start Date for each Account.

“Force Majeure” means an event that prevents a Party from performing its obligations hereunder, that is not within the reasonable control of the Party affected by such event (“Affected Party”), and that by the exercise of due diligence, the Affected Party is unable to overcome in a commercially reasonable manner. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by ComEd or PJM; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority. Force Majeure does not include changes in the market for electricity that increase the cost to Supplier of obtaining the electricity necessary to perform Supplier's obligations hereunder or that allow Customer to obtain electric service at a cost lower than the cost to obtain such service from Supplier pursuant to this Agreement.

“Holdover Rate” shall mean that rate set out in Attachment B hereto, which is payable hereunder by Customer for any electricity supplied to Customer by Supplier pursuant to this Agreement during a Holdover Term.

“Holdover Term” means that period of time after the End Date for any of the Accounts during which Supplier continues to supply electricity to Customer hereunder.

“Law” means with respect to the subject matter of this Agreement, any applicable federal or Illinois law, rule, regulation, ordinance, statute, judicial decision, or administrative order.

“Line Loss Charges” mean the charges imposed by ComEd and by PJM and payable by Supplier in connection with the supply of electricity to Customer in accordance with this Agreement. Line Loss Charges are a Variable Price Component and are subject to change during

the term of this Agreement.

“OATT” means Open Access Transmission Tariff

“Party” means Customer or Supplier, as applicable.

“Parties” means Customer and Supplier.

“PJM” means the PJM Interconnection, LLC or other entity approved by the Federal Energy Regulatory Commission or a successor regulatory body that provides transmission service within ComEd’s service territory.

“Start Date” means, with respect to each of the Accounts, December 1, 2008 or the first date thereafter on which Supplier first supplies electricity to such Account.

“Supplier Fixed Price” means the price for each kilowatt hour of electricity purchased pursuant to this Agreement, as set forth on Attachment B. The Supplier Fixed Price includes Congestion Charges, Capacity Charges and Transmission Service Charges associated with the electricity purchased pursuant to this Agreement.

“Taxes” mean all applicable federal, state, municipal and other taxes imposed either on Customer or that Supplier is required to collect from Customer in Supplier’s function as a provider of electricity to Customer. All Taxes invoiced to the Customer under this Agreement will be set out on the invoice as a separate line item.

“Tradable Renewable Energy Certificates” means certificates evidencing the purchase of the renewable attributes associated with the generation of renewable electric energy that meet or exceed the requirements of the GreenE Renewable Energy Certification Program administered by the Center for Resource Solutions.

“Transmission Service Charges” means all charges for transmission service (other than for Ancillary Service Charges, which will be invoiced separately) as identified in the applicable OATT Tariff for the provision of transmission service by PJM . Transmission Service Charges are included in the Supplier Fixed Price.

“TRC Charges” means Supplier’s price for Tradable Renewable Energy Certificates, which price is set out in Attachment B.

“Variable Price Component” means a price component that may be adjusted without markup to reflect increases or decreases in Supplier’s cost for Ancillary Services or Line Losses

in connection with the energy supplied hereunder, resulting exclusively from changes in applicable PJM, or ComEd tariffs or changes in applicable laws or regulations.

B. ELECTRICITY SUPPLY.

1. **Full Requirements Purchase.** Beginning on the Start Date for each Account and ending on the End Date for such Account, , Supplier will supply and Customer will purchase Customer's full requirements for electricity for the Accounts listed in Attachment A, at the Supplier Fixed Price set out in Attachment B, plus applicable ComEd Charges, Line Loss Charges, , Ancillary Service Charges, TRC Charges and Taxes, all of which will be passed through to Customer without margin or mark-up.

2. **Tradable Renewable Energy Certificates.** Supplier also will provide Customer with Tradable Renewable Certificates, in a quantity equal to ___ percent (___%) of the electric energy supplied to Customer under this Agreement each month during the term of this Agreement at the price for Tradable Renewable Energy Certificates set out in Attachment B .

3. **Delivery of Electricity.** Supplier shall deliver electricity to Customer at the Delivery Point, and upon delivery, risk of loss and title shall transfer to Customer.

4. **Variance in Customer's Consumption of Electricity.** Customer shall use reasonable efforts to notify Supplier of any expected material change in the volume or pattern of Customer's consumption of electricity at least thirty (30) days in advance of any such material change.

C. REQUIRED INFORMATION AND AUTHORIZATIONS. Customer shall designate Supplier to ComEd as an authorized recipient of Customer's current and historical energy billing and usage data. Customer hereby authorizes Supplier to take such actions it deems necessary to enroll the Account(s) with ComEd as Accounts to be served by Supplier and otherwise to meet its obligations under this Agreement. Customer shall take any actions and execute any documents as Supplier shall reasonably request in this regard. Customer shall also provide to Supplier the following information: Customer's ComEd account numbers and meter numbers, meter read data, rate class, electric usage, Customer's formal legal name, addresses, telephone number, facsimile number, and other information reasonably requested by Supplier from time to time, including without limitation, facility descriptions, operation information, and other

information concerning the Accounts. Customer shall promptly notify Supplier in writing of any changes in any information provided concerning the Accounts, including without limitation (i) any change to the name associated with any of the Accounts; and (ii) any change in the Account Number associated with any of the Accounts.

D. PRICE, BILLING AND PAYMENT.

1. **Price.** Customer shall pay Supplier for each kilowatt-hour of electric energy delivered to Customer, at the Seller Fixed Price set forth on Attachment B hereto. Buyer shall also pay Supplier any additional amounts shown on each invoice for ComEd Charges, Line Loss Charges, Ancillary Service Charges, TRC Charges and Taxes.

2. **Billing and Payment.** Supplier shall, on a monthly basis, provide Customer with a single consolidated bill for all services provided under this Agreement to all of the Accounts for the immediately preceding billing period during the term of this Agreement and during any Holdover Term. Supplier will issue an invoice to Customer no later than ten (10) business days after the close of each monthly billing period. Customer shall make payments to the address specified in Attachment B or to such other address for payment specified in a notice to Customer from Supplier from time to time during the Term of this Agreement. Payment shall be made, and any late payments shall bear interest, pursuant to the provisions of the Illinois Local Government Prompt Payment Act [50ILCS505/1 et. seq.]. Supplier reserves the right to adjust its billing cycle from time to time, but no more frequently than once in any twelve-month period. Customer acknowledges that Supplier's ability to calculate the amount due from Customer is dependent on Supplier's receipt of certain information from ComEd or PJM. If Supplier does not receive such information in time to prepare Customer's invoice, Supplier shall have the right to invoice Customer based on estimated meter readings or other reasonably estimated information. In such event, any differences between Supplier's estimate and the information supplied by ComEd or PJM will be shown on Customer's invoice for the next billing cycle after the billing cycle in which Supplier receives the necessary information from ComEd or PJM.

3. **Billing Disputes.** Customer will be deemed to have waived any billing disputes unless presented to Supplier in writing within twenty-four (24) months of the date on which Customer receives Supplier's invoice. All other claims Customer may have related in any way to this Agreement or the products and services provided hereunder will be deemed waived if

Customer fails to notify Supplier of such claims within twenty-four (24) months after termination or expiration of this Agreement.

4. **ComEd Charges.** Customer shall have full responsibility for payment of any existing amounts owed to ComEd for service provided before the Start Date. To the extent that Customer fails to timely remit payment to Supplier, Supplier shall have the right to delay Supplier's payments that are due and owing to ComEd until Supplier receives payment from Customer. Customer acknowledges that its failure to timely remit payment to Supplier of amounts due and owing to ComEd may result in ComEd requesting that Customer provide a deposit and/or ComEd's suspension of service to Customer. If Supplier fails to remit timely payment of amounts due and owing to ComEd, other than due to Customer's failure to timely remit payment to Seller, then Supplier will indemnify and hold Customer harmless from all costs and losses associated with such failure.

E. **TERM.** The term of this Agreement will commence on the Effective Date and, unless terminated earlier as otherwise provided in this Agreement, will continue thereafter until the End Date, or if the End Date differs for different accounts, then the term of this Agreement will end on the latest occurring End Date or, if Supplier continues to supply electricity to Customer during a Holdover Term, until terminated by either Party upon thirty (30) days written notice to the other. With respect to each of the Accounts, the term of the Parties' obligations pursuant to Section B1 of this Agreement shall commence on the "Start Date" and end on the "End Date" for such Account, unless extended by the mutual written agreement of the Parties or as otherwise provided in this Agreement. Supplier will use commercially reasonable efforts to begin service to the Accounts on December 1, 2008, but if Supplier is unable to enroll one or more of the Accounts by such date as a result of circumstances beyond Supplier's control (including Customer's failure to notify ComEd that it has selected Supplier as its supplier or any acts or omissions of ComEd), the Start Date(s) will occur on the next regularly scheduled ComEd meter read date in the month and year following successful enrollment of such Account(s). In such event, Supplier, in its discretion, will have the right, but not the obligation, upon written notice to Customer to extend the End Date to reflect the delay in the start of Supplier's supplying electricity to Customer.

Any notice period in this Agreement to the contrary notwithstanding, if Customer terminates the Agreement in accordance with its terms, such termination shall become effective at the later of the applicable termination date or the next regularly scheduled meter read cycle date at which Supplier is able to return Customer to being served by ComEd or any alternative supplier elected by Customer. Nothing in this Agreement shall be deemed to require or otherwise obligate Supplier to offer to extend the term of this Agreement.

F. CREDITWORTHINESS. From time to time each Party will provide the other Party with reasonable information as requested to complete a credit review. If at any time a Party experiences any material adverse change in its financial condition which, in the reasonable opinion of the other Party, will materially adversely affect the first Party's ability to perform its obligations under this Agreement, or if Customer has made two (2) or more late payments, the other Party will have the right to require that the Party experiencing the material adverse change in its financial condition, or Customer if Customer has made two (2) or more late payments, post security or make other credit arrangements satisfactory to the other Party in its reasonable discretion (which may include without limitation, making a cash deposit, posting a letter of credit at a financially sound bank or other financial institution, or prepaying Supplier for electricity supplied under this Agreement) or to increase or supplement security or other credit arrangements previously put in place, in any such circumstance to ensure prompt performance by each Party of its obligations under this Agreement. Each Party will provide the requested security or credit arrangements, including any increase thereof, within five (5) business days of the other Party's request.

G. Default.

1. Events of Default. An "Event of Default" means any one of the following: (i) Customer's failure to make, when due, any payment required under this Agreement if not paid within ten (10) business days after Customer's receipt of notice from Supplier that payment was not made when due; or (ii) any representation or warranty in this Agreement made by a Party proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement, if not cured within five (5) business days after written notice from the other Party; or (iii) either Party fails to provide additional security or credit arrangements as provided in this Agreement; (iv) Supplier fails to

take all steps necessary to ensure delivery of electricity to Customer, including without limitation failure to make when due any payment required in connection with the purchase by Supplier of electricity to be delivered to Customer; (v) except to the extent excused by Force Majeure, the failure by a Party to perform any material obligation set forth in this Agreement where, in circumstances such failure is curable, it is not cured within twenty (20) business days after receipt of written notice thereof; or (vi) a Party: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (c) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for twenty (20) business days after such filing; (d) otherwise becomes bankrupt or insolvent (however evidenced); or (e) is unable to pay its debts as they fall due.

2. **Remedies upon Default.** If an Event of Default occurs with respect to a Party (the “Defaulting Party”), the other Party (the “Non-Defaulting Party”) may, in its discretion, at any time, terminate this Agreement in whole upon written notice to the Defaulting Party setting forth the effective date of termination (the “Early Termination Date”). If this Agreement is terminated, in whole or in part, pursuant to this Section, the Non-Defaulting Party will in good faith calculate a termination payment as set forth below, and the Defaulting Party shall pay such amount following receipt of notice of such amount as provided herein. The Parties acknowledge and agree that any termination payment under this Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect.

a. If Customer terminates this Agreement due to the default of Supplier, Supplier will pay Customer the following early termination payment: [Market Value plus Costs] minus Contract Value, only if the Market Value plus Costs is greater than the Contract Value.

b. If Supplier terminates this Agreement due to the default of Customer, Customer will pay Supplier the following early termination payment: [Contract Value plus Costs] minus Market Value, only if the Contract Value plus Costs is greater than the Market Value.

c. For purposes of this Section, "Market Value" means the amount, as reasonably determined by the Non-Defaulting Party as of the Early Termination Date, that a bona fide third party would pay for the Remaining Anticipated Usage at current market prices. In determining "Market Value", the Non-Defaulting Party may consider, among other things, quotations from leading suppliers in the wholesale energy industry, the Non-Defaulting Party's internally developed forward price valuations, and other bona fide offers from either third parties or Affiliates of the Non-Defaulting Party, all as commercially available to the Non-Defaulting Party and adjusted for the length of the remaining Term and differences in transmission costs, volume, and other factors, as the Non-Defaulting Party reasonably determines. "Costs" mean brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by, or on behalf of, the Non-Defaulting Party in terminating, liquidating, or obtaining any arrangement pursuant to which it has hedged its obligations, and attorneys' fees, expenses and costs, if any, incurred in connection with enforcing its rights under this Agreement. "Remaining Anticipated Usage" means the amount of electricity (in kWh), as reasonably determined by the Non-Defaulting Party, that would have been used by each Account covered by the termination during the remaining term of this Agreement had it not been terminated early.

H. CERTAIN RIGHTS AFTER TERMINATION OR EXPIRATION. If following termination or expiration of this Agreement the Accounts remain designated by ComEd as being served by Supplier, Supplier may, consistent with Law and in its sole discretion, either (i) continue to serve such Accounts during a Holdover Term or (ii) during a Holdover Term that is not due to a negligent or willful omission or wrongful act of Supplier, move such Accounts to the then applicable ComEd tariff service. In either case, Supplier shall have the right to pursue all additional remedies available at law or in equity, unless the Accounts remain designated by ComEd as being served by Supplier due to a negligent or willful omission or wrongful act of Supplier in which event Customer shall have the right to pursue all additional remedies available at law or in equity and associated with electricity being supplied by Supplier during such Holdover Term. The Supplier Fixed Price payable during any Holdover Term is set out in Attachment B, unless the Accounts remain designated by ComEd as being served by Supplier due to a negligent or willful omission or wrongful act of Supplier, in which event the Supplier Fixed Price during any Holdover Term shall be remain the price shown on Attachment B for the

period before the commencement of the Holdover Term. This Agreement will continue to govern the provision of service during any Holdover Term. Either Party may terminate a Holdover Term at any time upon thirty (30) days advance written notice to the other or upon notice delivered pursuant to such other time period required by Law, whichever is longer. Any such termination shall be effective as of the next meter read cycle date with respect to each Account. If Supplier so requests, Customer will cooperate with Supplier in its efforts to cease providing service to Customer after termination or expiration of this Agreement, whether in whole or in part.

I. REPRESENTATIONS AND WARRANTIES. Each Party warrants and represents to the other the following: (i) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform under this Agreement; (iii) the execution, delivery and performance of this Agreement are duly authorized and do not violate any governing documents or any contracts to which it is a party or any laws, rules or regulations applicable to it, including without limitation laws or regulations concerning Seller's authorization to supply electricity at retail in the State of Illinois; and (iv) there is no material event(s) or other agreement(s) which would impair that Party's right, authority or ability to execute this Agreement and otherwise consummate the transactions contemplated by this Agreement.

J. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF CUSTOMER. Customer warrants, represents and covenants that: (i) the data given and representations made concerning its Accounts are true and correct to Customer's reasonable knowledge; and (ii) Customer is the party of record on the Accounts.

K. FORCE MAJEURE. A Party's failure to perform its obligations, other than the obligation to make payments when due hereunder for electricity supplied to Customer by Supplier, as the result of an event of Force Majeure will be excused the duration of the event of Force Majeure, provided that: (i) to the extent reasonably possible, the Affected Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to, the nature and date of the occurrence and the expected duration of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the Affected Party uses commercially reasonable

efforts to remedy its inability to perform. If the event of Force Majeure continues for more than thirty (30) days, then the Party whose performance is not prevented by the event of Force Majeure will have the right to terminate this Agreement by written notice to the Affected Party delivered no less than fifteen (15) days before the termination date.

L. LIMITATIONS OF LIABILITY AND INDEMNITY. Notwithstanding any other provision of this Agreement to the contrary, the entire liability of each Party for any and all claims, losses, expenses (including attorneys' fees and court costs), damages, demands, judgments, causes of action or suits (collectively, "Claims") of any kind arising from or relating to this Agreement, including any causes of action in contract, tort, strict liability or otherwise, will be limited to direct actual damages only, subject in all cases to an affirmative obligation on the part of each Party to mitigate its damages. Furthermore, in no event will either Party be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits. Each Party agrees to indemnify, defend and hold the other Party harmless from and against all third-party claims for damages, liability and expenses relating to or arising out of damage to property or injury to persons (including death) resulting from the negligent acts, errors or omissions of a Party or its agents. If the Parties are held jointly and severally liable for any claim, damage, liability or expense of any third-party, a right of contribution will exist between the Parties

M. DELIVERY SERVICE. Customer acknowledges and agrees that ComEd is responsible for the electricity delivery system and interruptions in the delivery of electric service and that Supplier exercises no independent control over ComEd's facilities necessary for the delivery of electricity. Customer disclaims any and all right to damages from Supplier arising from any interruption in electric service caused in whole or in part by interruption, termination or deterioration of service on the ComEd's system unless such interruption results from Supplier's failure to make payments to ComEd. Customer will be responsible for paying to Supplier, and Supplier will be responsible for paying to ComEd, all distribution charges payable to ComEd in connection with the delivery of electric service provided pursuant to this Agreement.

N. SETOFF/NETTING. Supplier shall have the right to set-off and net against any amounts owed to it by Customer under this Agreement, including without limitation any early termination payment, any of the following amounts: (i) monies owed to Customer under this

Agreement or under any other agreement between Supplier or any of Supplier's Affiliates, on the one hand, and Customer or any of Customer's Affiliates and (ii) any collateral or other financial assurance provided by Customer to Supplier under this Agreement.

O. DISCLAIMER. Customer acknowledges and agrees that no warranty, duty, or remedy, whether expressed, implied, or statutory, is given or intended to arise out of this agreement except as otherwise expressly stated herein, and supplier specifically disclaims all other warranties, expressed or implied, including any warranty of merchantability or fitness for a particular purpose or use.

P. WAIVER AND SEVERABILITY. Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character.

Q. ASSIGNMENT. Supplier may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (i) a bank, insurer, or other financial institution; or (ii) any person or entity (a) succeeding to all or substantially all of Supplier's assets or business or (b) into which Supplier is merged or otherwise combined or reorganized; provided that (i) it gives Customer sixty (60) days written notice of its intent to do so; (ii) the assignee satisfies in full Customer's credit requirements; and (iii) the assignee assumes in writing all of Supplier's obligations under this Agreement. Customer may assign any or all of its rights and obligations under this Agreement in their entirety or solely with respect to certain Accounts; provided (i) it gives Supplier sixty (60) days written notice of its intent to do so; (ii) the assignee satisfies in full Supplier's credit requirements; and (iii) the assignee assumes in writing all of Customer's obligations under this Agreement.

R. CONFIDENTIALITY. Customer agrees to keep all terms and provisions of this Agreement, including the pricing offered to Customer, confidential and not to disclose them to any third parties without the prior written consent of Supplier, except (i) as required by law, including, but not limited to, the Illinois Freedom of Information Act and the Illinois Open Meetings Act, or (ii) otherwise in accordance with Customer's normal practice in providing copies of agreements to which Customer is a party upon request. Supplier will keep confidential all Customer identifying information and Account information that is not otherwise publicly

available. Each Party shall have the right to disclose such information to its Affiliates and to its or to its Affiliates' employees, agents, advisors, and independent contractors who have a need to know such information and who agree to hold such information in the strictest confidence. Supplier shall also have the right to disclose information respecting Customer, including this Agreement, to brokers, agents, consultants or other third parties that are representing Customer in the purchase of electricity. Furthermore, Supplier may make such other disclosures to third parties of information, including aggregate consumption data, provided the form of the information is such that Customer's identity cannot reasonably be identified.

S. CHOICE OF LAW; VENUE. This Agreement will be interpreted in accordance with the laws of the State of Illinois without giving effect to principles of conflicts of law. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in Cook County, Illinois, and each Party hereto waives any right to object to venue in this regard. Each party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury or to initiate or become a party to any class action claims in respect of any action, suit or proceeding directly or indirectly arising out of or relating to this agreement or the transactions contemplated by this Agreement.

T. NO THIRD PARTY BENEFICIARIES. This Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under this Agreement.

U. NOTICES. To be effective, all notices must be in writing delivered by certified mail, return receipt requested, or by private courier, with a receipt provided, to the Parties at the following addresses:

To Supplier: **MidAmerican Energy Company**

To Customer: **David Cook**
Superintendent Facilities Management
City of Evanston
Suite 1450, Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

with a copy to:

Jewell Jackson
Purchasing and Contracts Manager
City of Evanston
Suite 4200, Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

A Party may change its address by providing notice of such change in accordance herewith. Notices shall be deemed to have been delivered upon actual delivery as evidenced by the receipt provided by the U.S. Postal Service or private courier.

V. ENTIRE AGREEMENT; SURVIVAL OF TERMS. This Agreement, including Attachments A and B, which are hereby incorporated herein and made a part hereof, comprises the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, regarding such subject matter, and may not be contradicted by any prior or contemporaneous oral or written agreement. A facsimile copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. This Agreement may not be amended except by a written amendment executed by both Parties. The applicable provisions of this Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution, and with respect to any indemnification obligations under this Agreement. The section headings used in this Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Agreement.

W. RELATIONSHIP OF THE PARTIES. Supplier is an independent contractor under this Agreement. Except as otherwise explicitly provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below, to be effective as of the last of those two dates.

**MIDAMERICAN ENERGY
COMPANY**

CITY OF EVANSTON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

ATTACHMENT B